Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT AND WILLIAM WILKES,
Petitioners,

—v.—

ESSEX COUNTY WELFARE BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

INDEX

IN THE ESSEX COUNTY COURT

No. A-11440

ESSEX COUNTY WELFARE BOARD, PLAINTIFF

v.

DORIS PHILPOTT, ET AL., DEFENDANT

COMPLAINT

Filed September 9, 1968

Plaintiff, Essex County Welfare Board, a corporate entity of New Jersey, having its principal office at the Hall of Records, Newark, Essex County, New Jersey, complaining of the defendants, says:

1. Defendant, William Wilkes, filed an application for assistance under the Disability Program administered by the plaintiff herein.

2. Defendant, William Wilkes, received assistance as a permanent and totally disabled needy person from the Essex County Welfare Board from February, 1967 through August 31, 1968, totalling $2,082.00.

3. Under the provisions of Title 44, Chapter 7, Revised Statutes of New Jersey, defendant, William Wilkes executed an Agreement to Reimburse under which he pledged to the plaintiff as a guarantee for the reimbursement of the funds so granted as assistance, all and every part of his real and personal property, and he further agreed to hold same free from sale, transfer or assignment, and not otherwise to dispose of same, except upon the consent of the plaintiff in writing. A copy of said Agreement to Reimburse is attached hereto and made a part hereof.

4. Defendant, William Wilkes, received check for a lump sum payment of Social Security Benefits in the amount of $1,864.20 which he has failed to turn over to the plaintiff as required under the Agreement to Reimburse, aforesaid.

5. Defendant, William Wilkes, together with the defendant, Doris Philpott, entered into a plan to conceal said lump sum payment by having William Wilkes endorse said Social Security check, and deposting same in an account maintained by Doris Philpott at the Fidelity Union Trust Company, American Branch, located at 241 Springfield Avenue, Newark, New Jersey.

6. Said transfer of funds to the defendant, Doris Philpott was purposely made to conceal said funds and to defraud the Essex County Welfare Board of its lawful rights to same.

Wherefore plaintiff demands judgment:

A. Directing the defendants to turn over to the plaintiff the balance of the bank account up to the sum of $1,864.20, maintained by the defendant, Doris Philpott, at the Fidelity Union Trust Company, American Branch; or in the alternative that a judgment be entered against the defendants, Doris Philpott and William Wilkes for the sum of $1,864.20.

B. That the defendants show cause before this Court why a judgment and order, in accordance with the prayers herein contained should not be entered.

C. That defendants be restrained from disposing of said bank account until further order of this Court.

/s/ John A. Matthews, Jr.
JOHN A. MATTHEWS, JR.
Attorney for Plaintiff

COMPLAINT

STATE OF NEW JERSEY)
) ss
COUNTY OF ESSEX)

Philip K. Lazaro, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Director of the Essex County Welfare Board, and I am duly authorized to make this affidavit on behalf of the plaintiff.

2. I have read the foregoing Complaint, and the allegations therein contained are true to the best of my knowledge, information and belief.

/s/ Philip K. Lazaro
PHILIP K. LAZARO

Sworn and subscribed to before me this 9th day of September, 1968.

Sydney H. Kleinberg
SYDNEY H. KLEINBERG
An Attorney at Law of New Jersey

F. O. I.

Case Number ED11761

AGREEMENT TO REIMBURSE

THIS AGREEMENT, made this 13th day of September in the year of our Lord one thousand nine hundred and 1966 between William Wilkes residing at 238 Grove St. in Newark, County of Essex, State of _____ hereinafter called the Recipient; and _____ residing at _____, in the County of _____ and State of _____, herein after called the Spouse; and the _____ County Welfare Board, a corporate entity of the State of New Jersey, hereinafter called the Board.

WITNESSETH

1. That the Recipient has made application to the Board for a grant of assistance as authorized under the provisions of Title 44, Chapter 7, Revised Statutes of New Jersey, as amended and supplemented, which said grant has been or may be approved by the Board contingent upon the execution of this Agreement.

2. That for and in consideration of the said grant of assistance and in accordance with the provisions of Title 44, Chapter 7, Revised Statutes of New Jersey, the Recipient and the Spouse herewith agree, jointly and severally, to reimburse said Board for all assistance paid to or on behalf of said Recipient.

3. That the Recipient and Spouse do hereby pledge to the said Board as a guarantee for the reimbursement of the funds so granted as assistance, all and every part of their real or personal property wherever found, and do further agree to hold the same free from sale, transfer or assignment, and not otherwise to dispose of same except upon the consent of the said Board in writing so to do, and further agree to assign to the said Board as collateral security for such advances all or any part of

their personal property as the Board shall or may from time to time specify.

4. That the said assistance grants to the Recipient being a direct benefit to the Spouse, the said Spouse does herewith and hereby release any vested or contingent property rights or future estates that he or she may now or at any time have in the above property so pledged whether owned by the said Recipient or by them jointly, and whether such rights shall arise by way of dower or courtesy or in any manner whatsoever.

5. That said release and joinder by the Spouse herein shall be as valid and effectual as if the Spouse had joined the Recipient in a conveyance of property to a third party, and the grant of assistance to the said Recipient being contingent upon such release and joinder by the Spouse shall be good and valuable consideration therefore.

6. That the said Board shall cause to be filed with the Clerk of the County Court or Register of Deeds and Mortgages in any County, a Notice of this Agreement to Reimburse, which Notice as of the date of such filing, shall have the same effect as a lien by judgment, and any real estate or land in which the Recipient and Spouse, jointly or severally, have or shall acquire a title or interest shall thereupon became charged and encumbered with a lien for assistance granted the Recipient, and said Notice shall have priority over all unrecorded encumbrances, and the said Board shall and may proceed at any time for the purpose of securing reimbursement in such manner and form as in the Statutes in such case made and provided.

This Agreement shall well and truly bind the parties hereto, his or her or their heirs, executors, administrators and assigns, to the faithful performance of the covenants and agreements, hereinbefore set forth.

IN WITNESS WHEREOF, all the parties hereto have interchangeably set their hands and seals or have caused these presents to be signed by its duly authorized officer and its seal to be hereto affixed the day and year first above written.

/s/ William Wilkes (L.S.)

Signed, Sealed and delivered in the presence of

/s/ [Illegible]

Essex County Welfare Board

By: /s/ Philip K. Lazaro (L.S.
Director of Welfare

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

BE IT REMEMBERED that on this 17th day of September in the year of our Lord one thousand nine hundred and 66 before me the Subscriber, a duly authorized employee of the Essex County Welfare Board, personally appeared William Wilkes who, I am satisfied, is the pledgor in the within contract named, and I having made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

/s/ [Illegible]
Case Worker

Order to Show Cause

(Filed September 9, 1968)

This matter being opened to the Court by John A. Matthews, Jr. attorney for plaintiff, and the Court having read the verified complaint, and good cause being shown,

It is on this 9th day of September, 1968

ORDERED that Doris Philpott and William Wilkes show cause before the Essex County Court, Law Division, at the Essex County Court House, Newark, New Jersey on the 27th day of September, 1968 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why defendants Doris Philpott and William Wilkes should not be ordered to pay to the plaintiff the balance in an account maintained by Doris Philpott at the Fidelity Union Trust Company, American Branch, up to the sum of $1,864.20.

It is further ordered that the defendants be and they are hereby restrained from withdrawing any monies on deposit in the account maintained by said Doris Philpott in said Fidelity Union Trust Company, and that the Fidelity Union Trust Company is hereby restrained from honoring any withdrawals from said account until further order of the Court.

It is further ordered that true copies of this Order to Show Cause and the Complaint filed in the matter, both of which may be certified as true copies by the attorney for plaintiff, to be served upon Doris Philpott, William Wilkes and Fidelity Union Trust Company, personally 8 days before the return date hereof.

/s/ Van Y. Clinton
J.C.C.

ANSWER

(Filed September 30, 1968)

The defendants, William Wilkes and Doris Philpott, by way of answer to the complaint herein says that:

1. Defendants lack sufficient knowledge or information to form a belief in respect to the allegations of paragraphs 1.

2. Defendants admit defendant William Wilkes, received assistance as a permanently and totally disabled needy person from the Essex County Welfare Board, but aver that they lack sufficient knowledge or information to form a belief as to the date of commencement of said payments and the exact total of the payments.

3. Defendants lack sufficient knowledge or information to form a belief in respect to the allegations of paragraphs 3.

4. Defendants admit that Mr. Wilkes received a check for a lump-sum payment of Social Security benefits in the amount of $1,864.20, and admit that he did not turn that check over to the plaintiff, but denies that he was under any obligation to turn said check over to the plaintiff.

5. Defendants admit that said check was deposited in an account maintained by Doris Philpott or Fidelity Union Trust Company, American Branch located at 241 Springfield Avenue, Newark, New Jersey. In all other respects as set forth in this statement, paragraph 5 is denied.

6. Defendants deny the allegations of paragraph 6.

FIRST SEPARATE DEFENSE

The provisions of Title 42 of the United States Code Annotated Section 407 prevents the transfer or assignment of the rights of any person to any future payment under Title II of the Social Security Act.

SECOND SEPARATE DEFENSE

The provisions of Title 42 of the United States Code, Section 407 require that none of the money paid or pay-

able or rights existing under Title II of Social Security Act shall be subject to execution, levy, attachment, garnishment or other legal process.

THIRD SEPARATE DEFENSE

The provisions of Title 42 of the United States Code, Section 407 create an express exception to the provisions of Title 44, of New Jersey Statute which provides for the reimbursement of funds, received under said chapter. The Social Security Act enacted pursuant to proper authority under the United States Constitution occupies (by virtue of Article VI, clause II of the United States Constitution) the field so as to preclude execution, levy, attachment, garnishment, or other legal process by any other creditor.

FOURTH SEPARATE DEFENSE

Taking all of a person's money or property so that he is forced to continue to receive state assistance is both irrational and inconsistent with the purposes and aims of Title 44, particularly that of helping the recipient attain self support and personal independence.

FIFTH SEPARATE DEFENSE

The Agreement to Reimburse can only be read to reach real or personal property in the applicant's possession or in which the applicant has a present right at the time of the execution of the document. It does not reach expectancies or property in which the applicant does not have a present right at the time of the execution of the document.

SIXTH SEPARATE DEFENSE

Conditioning the receipt of public assistance on the execution of an Agreement to Reimburse does not further the legitimate objectives of public assistance and deprives the recipient of liberty and equality secured by the Fourteenth Amendment to the United States Constitution.

SEVENTH SEPARATE DEFENSE

Conditioning the receipt of public assistance on the execution of an Agreement to Reimburse is coercive and unconscionable in that it places a condition on the right or entitlement to public assistance.

WHEREFORE, defendants demand judgment:

a. adjudicating the money as belonging to defendants;
b. dismissing the complaint.

/s/ Stephen Apollo
STEPHEN APOLLO
Attorney for Defendants
of record

GEORGE CHARLES BRUNO
of counsel

STATE OF NEW JERSEY :
: ss.
COUNTY OF ESSEX :

AFFIDAVIT OF SERVICE

The undersigned, of full age, being duly sworn according to law, upon my oath depose and say:

1. I am an employee of Newark Legal Service Project, attorneys for defendant in the within action.

2. On September 30, 1968, I mailed a copy of the within Answer, certified mail, return receipt requested, to the attorney for plaintiff, John Matthews, Esq., Essex County Welfare Board, Hall of Records, Newark, New Jersey, at the United States Post Office, and obtained receipt number of such mailing.

/s/ George C. Bruno

Sworn & subscribed to before me this 30th day of September, 1968.

/s/ Margretta B. Sumner
MARGRETTA B. SUMNER
A Notary Public of New Jersey
My Commission Expires Sept. 27, 1972

NOTICE OF MOTION FOR SUMMARY JUDGMENT

(Filed November 6, 1968)

To: FELIX A. MARTINO, ESQ.
Attorney for Essex County Welfare Board
Hall of Records
Newark, New Jersey

SIR:

TAKE NOTICE that on November 27, 1968, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, attorney for the defendants, Doris Philpott and William Wilks, will make application to the County Court, Law Division, Essex County, at the Hall of Records, Newark, New Jersey, for a summary judgment in favor of the defendants upon their demand set forth in the answer in this action.

/s/ Michael P. Ambrosio
MICHAEL P. AMBROSIO
Attorney for the defendants,
Doris Philpott and
William Wilks

GEORGE CHARLES BRUNO
of Counsel

ORDER

Filed November 26, 1968

This matter being opened to the court by John A. Matthews, Jr., Esq., attorney for the plaintiff, Essex County Welfare Board, in the presence of Newark Legal Services Project, George C. Bruno, Esq., appearing, attorneys for the defendants, Doris Philpott and William Wilkes, on the return date of an order to show cause why the defendants, Doris Philpott and William Wilkes, should not be ordered to pay to the plaintiff, Essex County Welfare Board, the balance in an account maintained by the said defendant, Doris Philpott, at the Fidelity Union Trust Company up to the sum of one thousand eight hundred and sixty four dollars and twenty cents ($1,864.20); and why the said defendants, Doris Philpott and William Wilkes, should not be restrained from withdrawing any monies on deposit in the said account maintained in the Fidelity Union Trust Company and why the defendant, Fidelity Union Trust Company, should not be restrained from honoring any withdrawals from said account; and it appearing that the respective parties have agreed to enter into a written stipulation of the facts to be argued in this matter, and it further appearing that the said defendants, Doris Philpott and William Wilkes, have consented to a continuation of the restraint imposed by the order to show cause entered in this matter on September 9, 1968 restraining any withdrawals from the said account maintained by the said defendants, Doris Philpott and William Wilkes, pending a final determination in this matter;

It is thereupon on this 18th day of November, 1968, ordered and adjudged that the defendants, Doris Philpott and William Wilkes, be and are hereby restrained from withdrawing any monies on deposit in the account maintained by the defendant, Doris Philpott, at the Fidelity Union Trust Company, and that the said defendant, Fidelity Union Trust Company, is hereby restrained from honoring all withdrawals from said account until further order of this court;

It is further ordered that this matter be returned to the active motion calendar list and that a hearing date be set for December 20, 1968.

The defendants do hereby consent to the form and contents of the within order.

/s/ Samuel A. Larner, J.S.C.
J.C.C.

NEWARK LEGAL SERVICES PROJECT
ATTORNEYS FOR DEFENDANTS
DORIS PHILPOTT and WILLIAM WILKES

By: /s/ MICHAEL P. AMBROSIO
GEORGE C. BRUNO, ESQ.

Counter Statement of Facts

(Which includes agreed stipulation presented to trial court)

This is an appeal taken by the Essex County Welfare Board from a decision of the Superior Court, Law Division, vacating restraints, dismissing its complaint, and holding that Social Security payments are immune from attachment by the Essex County Welfare Board.

The matter was heard below on the following factual stipulation:

"On August 2, 1966 the defendant, William Wilkes, made application to the plaintiff, Essex County Welfare Board, for public assistance under the State program for permanent and total disability assistance. This program is administered by the plaintiff, Essex County Welfare Board, in accordance with *N.J.S.A.44:7-38* to *N.J.S.A. 44:7-42*. As a condition to receiving such assistance the said defendant executed an Agreement to Reimburse in accordance with the provisions of *N.J.S.A. 44:7-14*. Under said Agreement he agreed to pledge to the said plaintiff all and every part of his real or personal property and agreed to hold the same free from sale, transfer or assignments and not otherwise to dispose of same except upon consent of the said plaintiff in writing.

"The defendant, William Wilkes, was referred by the palintiff, Essex County Welfare Board, to the Social Security Administration for the purpose of filing for possible benefits under the Federal Disability Benefits Law.

"On August 23, 1968, the plaintiff, Essex County Welfare Board discovered that the defendant, William Wilkes, had received a check from the Social Security Administration under date of August 20, 1968 in which he was paid $1,864.20 as a retroactive award for disability benefits.

"The defendant, William Wilkes, deposited the said check in the Fidelity Union Trust Company,

American Branch, in account #172666 in the name of the defendant, Doris Philpott.

"From that date up to the commencement of the proceeding at bar, namely up to and including August 31, 1968, the defendant, William Wilkes, has received advances of public assistance funds for his individual support and maintenance, totalling the sum of two thousand and eighty-two dollars ($2,082.00). The said defendant still continues to receive advances of the aforementioned public assistance funds from the said plaintiff.

"The defendant, William Wilkes, contends that this fund is not available for reimbursement of the said plaintiff and the plaintiff has instituted this action in order to enforce its claim against the funds."[1] (A3-1 to A5-25)

By written opinion filed January 22, 1969, the Honorable Samuel A. Larner of the Superior Court, Law Division, ordered that summary judgment be entered in favor of the respondent on the basis that Social Security benefits are immune from attack despite the reimbursement agreement previously executed pursuant to *N.J.S.A. 44:7-14.* (A59a-1 to A73a-28)

Appellant now appeals from that judgment.

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[1] Since the commencement of this action, effective October 1, 1969, respondent Wilkes was terminated from the rolls of Welfare Board. He does not now, nor will he require any further assistance from the Essex County Welfare Board as long as his present monthly federal benefits continue.

OPINION

(Filed January 22, 1969)

Argued: December 20, 1968 Decided: January 20, 1969

Mr. Felix A. Martino argued the cause for plaintiff (*Mr. John A. Matthews, Jr.*, attorney for plaintiff).

Mr. George Charles Bruno of the District of Columbia Bar, appearing pro hac vice, argued the cause for defendants, Doris Philpott and William Wilkes, (*Mr. Michael P. Ambrosio*, Newark Legal Services Project, attorney for defendants).

LARNER, J.S.C.

This matter came before the court on an order to show cause why a judgment should not be entered in favor of the plaintiff, Essex County Welfare Board, directing the Fidelity Union Trust Company to turn over to the plaintiff moneys on deposit in its bank in the name of Doris Philpott. To eliminate procedural pitfalls, the parties submitted a stipulation of facts and consented that the court determine the matter as if on final hearing based upon those facts.

On August 2, 1966, the defendant, Wilkes, applied to the Essex County Welfare Board for financial assistance under the State program for total disability assistance. *N.J.S.A.* 44:7-38, *et seq.* As a condition for said assistance, the defendant executed a reimbursement agreement in accordance with the provisions of *N.J.S.A.* 44:7-14 whereby he promised to reimburse the Board for all advances made to him and agreed that the filing of the reimbursement agreement would have the same force and effect as a judgment. The agreement and the statute also provide that the defendant pledges as security for such reimbursement all of his real and personal property. *N.J.S.A.* 44:7-14.

Defendant Wilkes was then referred by the Board to the federal Social Security Administration to apply for disability insurance benefits under 44 *U.S.C., ch.* 7. As

a result, defendant received a check on August 20, 1968 from the Social Security Administration in the sum of $1,864.20 as a retroactive award for disability benefits. By that time, the Welfare Board had advanced to defendant the total sum of $2,082.

Upon receipt of the Social Security check, defendant Wilkes deposited the same in the Fidelity Union Trust Company in an account in the name of the defendant, Doris Philpott. He admits, however, that the money is held in trust for him and that the defendant, Philpott, has no proprietary interest in the account. Plaintiff seeks reimbursement from the moneys on deposit in the bank.

Defendant contends that plaintiff is not entitled to reimbursement from this fund for several reasons, basing his argument mainly on the following: the federal statute underlying the Social Security payment, 42 *U.S.C. Sec.* 407, 49 *Stat.* 624 (1939), prohibits transfer or assignment of any future payments under the Act and provides that none of the monies paid or payable are subject to execution, levy, attachment, garnishment or other legal process and (2) the Congressional policy underlying the Social Security program preempts invasion of its benefits by all creditors of the recipient, including the Essex County Welfare Board, despite the reimbursement provisions of the agreement and the applicable New Jersey statutes. In addition, defendant attacked the validity of the required reimbursement agreement on constitutional grounds, but the recent United States Supreme Court opinion of *Snell* v. *Wyman*, No. 191, January 13, 1969, *affirming* 281 *F. Supp.* 853 (S.D.N.Y. 1968) is dispositive of this issue contrary to defendant's position.

The pertinent Federal statute, 42 *U.S.C. Sec.* 407, reads as follows:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, at-

tachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

The act covers two sets of circumstances. It prohibits the transfer or assignment of any future payments thereunder and exempts the moneys "paid or payable" from reach of creditors through legal process. If the plaintiff were an ordinary creditor seeking to levy on the lump sum fund received from the Social Security Administration, the statute by its terms would bar such process. The fund would be exempt from creditors even though its form had been converted from a check payable to the defendant to a bank account belonging to him. *See Lawrence* v. *Shaw*, 300 *U.S.* 245, 250 (1937) and *Porter* v. *Aetna Casualty & Surety Co.*, 370 *U.S.* 159, 162 (1962) as to parallel construction of Veterans Administration Act.

The intent of Congress is clear, namely to protect the recipient from the attack of creditors before and after the moneys are paid, and to permit him or his dependents to obtain the necessities of life. As long as the fund is not converted to a permanent investment, its mere deposit in a bank for use by the recipient does not expose it to attachment or levy by creditors. *Lawrence, supra; Porter, supra; Century Indemnity* v. *Mead*, 159 A. 2d 325, 328 (*Vt.* 1960). *cf. Carrier* v. *Bryant*, 306 U.S. 545 (1939).

Hence, the remaining issue is whether the Welfare Board is in the category of a creditor so as to be deprived of reimbursement from the Federal funds. A perusal of Title 44 of the New Jersey Statutes and particularly *N.J.S.A.* 44:7-14 leads to the conclusion that moneys paid by the County Welfare Boards are loans or advances and are not outright gifts to the poor. The Legislative determined as a matter of policy that such welfare payments may only be made upon condition that the recipient execute a reimbursement agreement. In many cases, of course, these agreements do not serve any practical purpose because of the absence of assets on the part of the most recipients. Nevertheless, the

ability to recoup money in some instances serves the social purpose of adding those moneys to the totality of the funds available for assistance to the needy. Such a legislative purpose is laudable and serves the welfare of the greatest number of indigents in the community.

In any event, as a result of the reimbursement agreement and the underlying statute, the County Welfare Board became a creditor of the defendant Wilkes to the extent of the moneys advanced under the program. As such a creditor, it would be subject to the limitations placed upon creditors by the foregoing exemption in the Federal statute in the absence of any countervailing provision or policy. And since the New Jersey statute granting reimbursement to the County Welfare Board is in real conflict with the Federal statute, it must yield thereto so as to afford exemption of the Social Security benefits. *U.S. Const. Art.* VI, *cl.* 2; *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hill* v. *Florida*, 325 *U.S.* 538 (1945).

The Board contends, however, that it is in a unique position and that its status is outside the scope of the class of creditors contemplated by Congress in adopting 42 *U.S.A. Sec.* 407. It bases its contention on a dichotomy between "voluntary" and "involuntary" creditors as articulated by the Court of Appeals of the District of Columbia Circuit in *Savoid* v. *District of Columbia*, 288 *F. 2d* 851 (1964) when dealing with a similar exemption provision in the Veterans Administration Act. The court in that case held that the District of Columbia was not barred by the exemption statute from recovery by way of reimbursement from Veterans Administration benefits paid to an incompetent and in the hands of his representative. The court concluded that the District as a governmental instrumentality was not a "voluntary" creditor in the ordinary sense and was therefore not within the class of creditors contemplated by Congress in the exemption provision of the statute. By this distinction, the court undoubtedly meant that inasmuch as the hospital was governmentally owned and the veteran was committed there by court order, the District of Columbia did not voluntarily extend its facilities and

services to the veteran. However, the opinion lacks any rationale underlying the created dichotomy beyond the statement of the judicial conclusion.

Similar results were reached in unreported decisions by the Federal District Court of New Jersey with regard to veterans' insurance proceeds, and by the Law Division of the Superior Court of New Jersey in a case involving Social Security benefits. Unfortunately, these opinions also do not attempt to express the basis for the distinction beyond the statement of the conclusion itself, namely, that the public body was not a creditor within the contemplation of Congress in the applicable statute. See also to same effect: *State* v. *Bean*, 195 *A.* 2*d* 68 (*Me.* 1963); *In Re Bemowski's Guardianship*, 88 *N.W.* 2*d* 22, (*Wis.* 1958).; *Dept. of Public Welfare* v. *Sevcik*, 164 *N.E.* 2*d* 10 (*Ill.* 1960).

In Pennsylvania, recovery was denied by a trial court to the Commonwealth in a veteran's pension case because of the effect of the exemption provision, even though the claimant was the state. *Dilijonas Estate*, 16 *Pa. D. & C.* 2*d* 142 (*Orphans' Ct.* 1958). *cf. Ace Estate*, 24 *Pa. D. & C.* 2*d* 534 (*Orphans' Ct.* 1960). *But see* other Pennsylvania trial court decisions: *Comm.* v. *Thompson*, 22 *Pa. D. & C.* 2*d* 236 (*C.P.* 1960); *Comm.* v. *Garlick*, 26 *Pa. D. & C.* 2*d* 389 (*C.P.* 1961); *Klaric Petition*, 27 *Pa. D. & C.* 2*d* 93 (*Orphans' Ct.* 1961).

There is, then, no precedent in any reported opinion on this question which is controlling on this court. And the opinions which have refused to enforce the exemption provision of the Federal statute are hardly persuasive.

In *Thiel* v. *Thiel*, 41 *N.J.* 446 (1964), the plaintiff sought to reach pension funds due to her husband from his employer in satisfaction of a support order for herself and her children. The pension agreement underlying the payment of the funds to the employee contained a restrictive provision that no "pension or payment on account of any person [shall] be subject to attachment, execution or other legal process against the PENSIONER." 41 *N.J.* at *p.* 449. The husband contended that this provision immunized the fund from garnishment by his wife. The Supreme Court held that the limitation

in the pension agreement did not apply to a wife seeking to reach the pension funds for support for herself and her children. Justice Schettino supported this conclusion on the basis of the following reasoning: *p.* 451

> "Regardless of the precise and restrictive wording of an exemption provision, the restraint created should not be a barrier against recourse to the fund when it provides the only reasonably accessible asset for support of the wife within her state of residence. *Cf. Schlaefer* v. *Schlaefer*, 71 *App. D.C.* 350, 112 *F. 2d* 177, 130 *A.L.R.* 1014 (1940). The purpose of exemptions is to relieve the person exempted from the pressure of claims hostile not only to his own essential needs but also to those of his dependents. But the purpose cannot be one of relieving him of familial obligations, perhaps destroying what may be the family's last and only security, short of public relief. The husband's duty is to share his pension benefits with his wife, and the courts of the state of her residence, if they have jurisdiction over the fund, ought to enforce that duty when there is no other reasonably practical means of obtaining support open to her within the state. Moreover, if we were to uphold his claim of exemption, we would 'feed the husband and starve the wife.' *Wetmore* v. *Wetmore*, 149 *N.Y.* 520, 529, 44 *N.E.* 169, 171, 33 *L.R.A.* 708 (*Ct. App.* 1896)."

The same philosophy was applied in a marital situation involving a statutory exemption of a public employee's pension in *Fischer* v. *Fischer*, 13 *N.J.* 162 (1953).

These cases rejecting the immunity provision of a statute or contract when the claim is made by members of the recipient's family for support are based upon the reasoning that the funds available to the husband were intended not only for his benefit but also for the benefit of his family at a time when his earning power has been reduced or terminated. They are based upon the special circumstance that the claimants seeking to reach the fund are identified with the beneficiary himself; and

that the pension in itself was always intended to protect not only the husband but his family as well. Because of this underlying purpose of the pension funds, the courts have refused to enforce the literal words of the exemption provision so as to deprive the family of a means of support and subject its members to the need for public relief.

This line of cases is not apposite to the circumstances involved herein. The Welfare Board is not an intended beneficiary, directly or indirectly, of the funds generated by the legislative policy underlying the Social Security legislation. It is a third party who asserts a claim against that fund because of its statutory and contractual position as a creditor. It is not identified with the recipient of the fund as is a wife or children; and it has no paramount right which transcends the expressed policy of the federal government in creating the Social Security Administration. It does not stand in such a position as to impel a court to disregard the clear language of the statute and impose an exception in its favor.

Although the claim of the Essex County Welfare Board serves a valid social purpose in enforcing the policy of repayment espoused by the New Jersey Legislature, I am unable to find in the Federal statute or the cases interpreting the same any sound basis for concluding that the Board is not a creditor subject to the same limitation as other creditors. The distinction made by other courts between "voluntary" and "involuntary" creditors is an artificial one which has no support in the pertinent legislation. There would appear to be no logical basis for treating the Board any differently from any other person or organization who advanced moneys to the indigent individual for his personal needs.

As observed by Judge Jayne in *Middlesex County Welfare Board* v. *Motolinsky*, 134 *N.J. Eq.* 323, 331 (Ch. 1944) in considering the right of a Welfare Board to reimburse from the proceeds of a life insurance policy:

> "The complainant as a municipal body cannot be distinguished from the creditors comprehended

by the statute. Equity cannot fashion exceptions which circumvent a statute obviously intended to encircle the rights of all creditors."

If a relative or a neighborhood grocer or a charitable institution who advanced funds or credit for the maintenance and support of an individual would be barred from recovery out of the federal funds, why should a Welfare Board be in any better position? The mere coincidence that the claimant is a public body cannot dictate a contrary result. In the absence of any exception in the statute demonstrating such an intent, the will of Congress must be enforced.

JUDGMENT

(Filed February 13, 1969)

This matter being opened to the Court by John A. Matthews, Jr. (Felix A. Martino appearing) attorney for the plaintiff, in the presence of George Charles Bruno, attorney for the defendants, upon the adjourned return day of an Order to Show Cause dated September 9, 1968, and the parties having submitted a stipulation of facts and consenting that the Court determine the matter as if on final hearing based upon these facts; and the Court having considered the briefs submitted and the arguments of counsel, and having heretofore rendered its written opinion under date of January 20, 1969;

It is on this 6th day of February, 1969

ORDERED that Judgment be entered in favor of the defendants, Doris Philpott, William Wilkes and Fidelity Union Trust Company, and against the plaintiff, Essex County Welfare Board, without costs.

/s/ Samuel A. Larner, J.S.C.
SAMUEL A. LARNER, J.S.C.

We consent to the form of the within Judgment.

STEPHEN APOLLO, ESQ.
Attorney for Defendants
Newark Legal Services Project

By: /s/ Michael P. Ambrosio
MICHAEL P. AMBROSIO
Attorney for Defendants

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-955-68

ESSEX COUNTY WELFARE BOARD, a corporate entity of the State of New Jersey, PLAINTIFF-APPELLANT

v.

DORIS PHILPOTT, WILLIAM WILKES and FIDELITY UNION TRUST COMPANY, DEFENDANTS-RESPONDENTS

Argued November 24, 1969

Before Judges Kilkenny, Labrecque and Leonard.

On appeal from Essex County Court, Law Division, whose opinion is reported in 104 *N.J. Super.* 280 (1969).

Mr. Ronald Reichstein argued the cause for appellant (Mr. John A. Matthews, Jr., attorney).

Mr. Althear A. Lester of Newark Legal Services Project argued the cause for respondents.

Miss Annamay T. Sheppard of New Jersey State Office of Poverty and the Law filed a brief as *amicus curiae.*

PER CURIAM—Decided Feb 24 1970

The Judgment is affirmed essentially for the reasons expressed by Judge Larner in his opinion, reported in 104 *N.J. Super.* 280 (Cty. Ct. 1969).

We requested at oral argument supplemental information as to the period of time embraced by the Social Security check of $1864.20 received on August 20, 1968 "as a retroactive award" for disability benefits. For completeness of the record, we wanted to ascertain whether the benefits were received for the same period defendant Wilkes was receiving financial assistance from the Essex County Welfare Board. We have only now been supplied with the requested information.

Defendant Wilkes applied to the Essex County Welfare Board for assistance on August 2, 1966; received an

initial grant of $108 in February 1967, which covered January 1967, and regular monthly payments of $108 from February 1967 through July 1968, for a total of $2082 up to the time of the commencement of these proceedings. He still was receiving public assistance funds from plaintiff, when it filed its brief herein.

Wilkes received a check in the sum of $1864.20, dated August 20, 1968, from the Social Security Administration. It was a retroactive award and represented monthly social security disability insurance benefits paid to him for the months of May 1966 and then from July 1966 through July 1968. Beginning with the May 1966 payment, his monthly benefit was $69.60 and was increased to $78.70 effective February 1968. The $1864.20 check was deposited in Fidelity Union Trust Company in the name of defendant Doris Philpott. Concededly, she holds the account in trust for Wilkes.

Thus, the records show that Wilkes received funds from both sources—Welfare Board and Social Security—covering the period from January 1, 1967 through July 1968. However, he did not receive monthly checks from both agencies at the same time, albeit the retroactive award did in some measure cover the same period.

Notwithstanding the foregoing additional facts, we conclude that the immunity from attachment, execution and levy of Social Security benefits paid or payable, provided for under 42 *U.S.C.* 407, immunized from seizure by the Essex County Welfare Board the lump sum benefits received by Wilkes from the Social Security Administration. The reimbursement agreement signed by Wilkes has the force of a judgment, *N.J.S.A.* 44:7-14; but enforcement of that judgment by the Welfare Board is subject to the same limitations expressed in the paramount Federal law, 42 U.S.C. 407, as in the case of any other general judgment.

Affirmed.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

[SEAL]

Refer to: DI:0:I
134-18-1094
Dec. 15, 1969

[Received Dec. 22, 1969—Newark Legal Services Project]

Mr. Althear A. Lester
Newark Legal Services Project
Central Office
449 Central Avenue
Newark, New Jersey 07107

Dear Mr. Lester:

Re: William Wilkes, 60 Hayes Street, Newark, New Jersey 07103

This letter is in reply to your inquiry dated November 25, 1969, regarding the amount of benefits paid to Mr. Wilkes and the period of time for which these benefits were paid.

We have examined his records and found that a period of disability was established for him beginning November 30, 1963. His first month of entitlement to benefits was June 1964, and his benefit amount was $65.00 monthly. This amount was increased to $69.60 monthly beginning January 1965, and again to $78.70 effective February 1968. These increases were granted by a change in the law. The check for $1,864.20 was for benefits from May 1966 through July 1968, less the check for June 1966. We had withheld benefits pending a newer address at that time. When we received the new address, this check was released to Mr. Wilkes.

We hope this information is helpful.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL
Assistant Director
Bureau of Disability Insurance

January 11, 1971

Office of the Clerk
Supreme Court of New Jersey
State House Annex
Trenton, N. J.

Attention: Irving B. Zeichner

RE: ESSEX COUNTY WELFARE BOARD

v.

PHILPOTT, *et als*
A-42

Dear Sir:

At the argument of this matter, the Court requested additional information concerning benefits paid to Mr. Wilkes.

I have examined the records of the Essex County Welfare Board and enclose herewith a statement containing the requested information.

There was some difficulty locating the file and I apologize to the Court for the delay.

Very respectfully,

ESSEX COUNTY WELFARE BOARD

/s/ Ronald Reichstein
RONALD REICHSTEIN
Associate Counsel

RR:fb
Encl.

cc: Richard N. Tilton, Esq.
Newark Legal Services Project
449 Central Avenue
Newark, N. J.

A-42

RE: ESSEX COUNTY WELFARE BOARD

VS.

PHILPOTT, *et als*

Mr. Wilkes first applied for assistance April 14, 1964 and received benefits from Welfare of $103. per month as of September 1, 1964 until January 1, 1965, at which time it was ascertained that he was receiving Social Security Benefits of $60. per month. The Social Security Benefits were paid for the period starting August 1, 1964. Mr. Wilkes' first Social Security check was for $180. on October 28, 1964. As of January 1, 1965, Welfare benefits were reduced to $43. per month and continued until June 30, 1965, when Mr. Wilkes' case was discharged because he was then in the Verona Sanitarium.

Mr. Wilkes' case was reopened effective as of January 1, 1967 for Welfare benefits of $108. per month until June 1, 1968 when it was reduced to $30. per month, because it was ascertained that he had been receiving monthly Social Security Benefits of $78.70 per month. Mr. Wilkes did not receive his July, 1968 Social Security check and additional Welfare benefit of $72. was paid to him for that month. The $30. per month payments continued to March 1, 1969 when there was an increase to $54. per month because of a rebudgeting. These payments continued until May, 1970 at which time it was ascertained that Mr. Wilkes was also receiving $92. per month from the Veterans Administration effective as of July 1, 1970 and his income from VA and SS then exceeded his budgeted needs.

February 12, 1971

Honorable Chief Justice, and
Associate Justices of the
New Jersey Supreme Court
State House Annex
Trenton, New Jersey

RE: ESSEX COUNTY WELFARE BOARD vs. PHILPOTT, *et als*
A-42

Honorable Gentlemen:

When this case was before the court on oral argument, the question was posed as to whether there were any administrative determinations as to the proper construction of 42 U.S.C. § 407.

I have received the attached reply to your inquiry from Hugh F. McKenna, Director of the Bureau of Retirement and Survivors Insurance, Social Security Administration, in the U. S. Department of Health, Education and Welfare.

Mr. McKenna, in his letter, categorically states that "No official Administration interpretation of Section 407 distinguishes between public, private and individual creditor claims against Social Security payments." According to Mr. McKenna, there would appear to be no justification for any legal distinction between "voluntary" creditors (private) and "involuntary" creditors (public). The legal rights of both should therefore be the same. The "involuntary-voluntary" dichotomy which the plaintiff-appellant in this case proposes does not enjoy the support nor encouragement of the Social Security Administration.

I have also enclosed typed copies of the Regulation (Law and Regulation Issue No. 52, Regulations No. 4, Subpart J, 404.970, July 29, 1968) and two Rulings (62-12 and 63-7) relating to Section 407 that were sent to me by Mr. McKenna. The Rulings seem to add little to the instant case. Section 404.970 renders some assistance

and seems to reaffirm the plain meaning of the language of 42 U.S.C. 407. That is:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

If the Court wishes any further assistance from me, I stand ready to oblige. I may be reached at the above address and I would request that the Court refer future correspondences to me here.

Wherefore, the Mr. Wilkes, Defendant-Respondent, prays that the judgment of the Courts below be affirmed and that his Social Security Benefits presently in escrow be restored to him.

Respectfully,

GEORGE CHARLES BRUNO

GCB:an

Enclosures

cc: Ronald Reichstein
Hall of Records
Essex County Welfare Board
Newark, New Jersey

William Wilkes
60 Hays Street
Newark, New Jersey

[Post Mark Trenton—[Illegible]]

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S), REQUIRED FEE(S) PAID.

☐ Show to whom, date and address where delivered ☐ Deliver ONLY to addressee

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STATE OF NEW JERSEY
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FEB 16 1971

SOCIAL SECURITY

Department of
HEALTH, EDUCATION, AND WELFARE
Social Security Administration

No. 1963-1

January 1963

RULINGS ON FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

SECTION 204 and 207.-OVERPAYMENT-ADJUSTMENT AFTER DISCHARGE IN BANKRUPTCY

20 CFR 404.502

A worker was overpaid $1176 in old-age insurance benefits; the overpayment arose primarily through his fault. Subsequently he was granted a discharge in bankruptcy, the overpayment being scheduled among his debts in the bankruptcy proceedings. Shortly afterward he died and his widow became entitled on his earnings record to a $253 lump-sum death payment. Held, the discharge in bankruptcy does not preclude the adjustment of an overpayment against benefits payable on the worker's earnings record, since rights under title II are specifically exempt from operation of the bankruptcy law, and the lump-sum of $255 due the widow will be paid but will be used to reduce the overpayment.

A worker, D, became entitled to old-age insurance benefits beginning October 1957, when he attained age 65. At that time he was not working, and benefit payments were made to him. He resumed full-time employment in June 1958 and continued in this work until shortly before his death in September 1962. Because of work deductions required under section 203 by reason of his work and earnings, no benefits were payable to him for June 1958 or any subsequent month through August 1962, in which month his entitlement ended because of his death. Though aware of the requirement that he must

notify the Administration upon his return to work, he failed to do so. The Administration learned about his work from another source, but only after D had been overpaid $1176, at which time his payments were suspended.

The Administration notified D that he owed the Government $1176; that recovery of this amount could not be waived under section 204(b) of the Act because (among other reasons) he had not been "without fault" in the circumstances giving rise to the overpayment; and asked him to make refund. In bankruptcy proceedings instituted shortly afterward, he listed among his debts the $1176 due the Government, and ultimately was given a discharge in bankruptcy. At the time of his death, no part of the $1176 had been recovered.

Upon D's death, his widow, age 58, filed application for a lump-sum death payment on D's earnings record, and established her entitlement to such a lump sum in the amount of $255.

Under section 204(a), and Regulations No. 4. § 404-502, benefits to which an individual is entitled after he has been overpaid benefits will not be paid or will be decreased until the amount of the overpayment has been recovered; and if any part of such overpayment has not been recovered when the overpaid beneficiary dies, benefits (including a lump-sum death payment) subsequently payable to other beneficiaries on the same earnings record will not be paid or will be decreased until the entire amount of the overpayment has been recovered. Section 204(b) prohibits recovery of the overpayment where the overpaid individual was without fault and adjustment or other recovery would either defeat the purpose of title II or be against equity and good conscience.

In the present case, an overpayment of $1176 made to D on his own earnings record had not been recovered when he died; his widow became entitled on D's earnings record to a lump sum of $255; section 204(b) was not applicable because D, the overpaid individual, had not been "without fault" in the circumstances which

gave rise to the overpayment. On these facts, considered apart from D's discharge in bankruptcy, the Act and the Regulations clearly require that the $255 lump sum otherwise due the widow be used to reduce the overpayment.

D's discharge in bankruptcy may preclude the Government from maintaining civil suit against D or his estate to recover overpayments made to D and duly scheduled in the bankruptcy proceedings. However, his discharge in bankruptcy does not cancel the overpayment or preclude adjustment required by section 204(a) against subsequent benefits on the same earnings record, whether the benefits be his own or those of a survivor. The terms of section 204(a) are mandatory, and operate irrespective of whether there exists a liability enforceable in the courts. They do not merely permit the Administration to set off and obligation due it against an obligation it owes to the claimant; rather, they require adjustment reducing subsequent benefits payable until the amount of the erroneous payment is recovered.

Further, section 207 of the Act specifically provides that title II rights and payments are not to be affected by the operation of the bankruptcy law. This section provides:

> The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the monies paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Emphasis supplied)

Undoubtedly, the principal purpose of this section is to exempt title II benefits from the claims of creditors. But it also appears from the language of section 207 that Congress exempted from the operation of the bankruptcy law all "rights" under title II. In section 204(a) of title II, the Secretary has clear authority to adjust overpayments against "subsequent benefits payable" un-

der the law. That this authority creates a "right" would seem evident from *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 239; 67 S.Ct. 1599, 1602 (1947), wherein the Supreme Court said: "The Government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'" Thus, the Secretary would be required to exercise this "right" independently of the provisions of the bankruptcy law.

Accordingly, it is held that the lump-sum death payment of $255 payable to D's widow must be withheld to recover part of the overpayment owed by D.

No. 1962-1
January 1962

SOCIAL SECURITY

Department of
HEALTH, EDUCATION, AND WELFARE
Social Security Administration

RULINGS ON FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

SECTION 207.-LEVY AGAINST BENEFITS

20 CFR 404.970 SSR 62-12

Generally, social security benefit checks are exempt from execution, levy, attachment, garnishment or other legal process, or from the operation of any bankruptcy or insolvency law. One exception is that social security benefits are subject to the authority given to the Secretary of the Treasury to make levies or seizures for the collection of delinquent Federal taxes.

The question is whether social security benefit checks are exempt from levy or seizure by the Secretary of the Treasury.

Section 207 of the Social Security Act provides:

The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

However, section 6331 of the Internal Revenue Code of 1954 (26 U.S.C. 6331) which was enacted into law on August 16, 1954, subsequent to the enactment of section 207, gives the Secretary of the Treasury the right to levy or seize for collection of delinquent Federal taxes, prop-

erty, rights to property whether real or personal, tangible, or intangible, and the right to make successive levies and seizures until the amount due, together with all expense, is fully paid.

Section 6334 of the Internal Revenue Code of 1954 (26 U.S.C. 6334) provides in subsection (c):

Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

The property exempt from levy in subsection (a) includes wearing apparel and school books; fuel, provisions, furniture, and personal effects, not to exceed $500 in value; books and tools of a trade, business, or profession, not to exceed $250 in value. Social security benefits are not specifically exempted from levy by this subsection. Furthermore, as between conflicting treatment of the same matter by two statutes (section 207 of the Social Security Act and section 6334 of the Internal Revenue Code of 1954), the one enacted later (section 6334 of the Internal Revenue Code of 1954) would control with respect to that matter.

Therefore, since section 6334 of the Internal Revenue Code of 1954 does not specifically exempt social security benefits from levy, such benefit checks may be levied upon by the Secretary of the Treasury under section 6331 of the Internal Revenue Code of 1954.

LAW AND REGULATIONS ISSUE NO. 52

Regulations No. 4

SUBPART J—PROCEDURES, PAYMENT OF BENEFITS AND REPRESENTATION OF PARTIES

404.970 TRANSFER or ASSIGNMENT.—The Administration shall not certify, as provided in § 404.968, any amount for payment to an assignee or transferee of the person entitled to such payment under the Act, nor shall the Administration certify such amount for payment to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person entitled to the payment under the Act.

SUPREME COURT OF NEW JERSEY

SEPTEMBER TERM 1970

A-42

ESSEX COUNTY WELFARE BOARD, a corporate entity of the State of New Jersey, PLAINTIFF-APPELLANT

v.

DORIS PHILPOTT, WILLIAM WILKES AND FIDELITY UNION TRUST COMPANY, DEFENDANTS-RESPONDENTS

Argued December 21, 1970—Decided July 12, 1971

On appeal from Superior Court, Appellate Division, whose opinion is reported in 109 *N.J. Super.* 48.

Mr. Ronald Reichstein argued the cause for plaintiff-appellant (Mr. *John A. Matthews, Jr.*, attorney; Mr. *Reichstein*, on the brief).

Mr. *George Bruno*, of the Newark Legal Services Project, argued the cause for defendants-respondents Doris Philpott and William Wilkes (Mr. *Richard N. Tilton*, of the Newark Legal Services Project, of counsel).

No appearance entered or brief filed on behalf of defendant-respondent Fidelity Union Trust Company.

The opinion of the Court was delivered by HALL, J.

The question in this case is whether a state welfare agency, which had advanced monthly disability assistance to a person under *N.J.S.A.* 44:7-38 to -42, may recoup, out of a subsequent, retroactive, lump sum federal social security disability insurance benefits payment to him, an amount representing the duplication of benefits thereby received.

The federal payment in the sum of $1864.20 to defendant Wilkes, the recipient of both sets of benefits, was deposited and constitutes the balance in a bank account under the name of defendant Philpott (as a matter of convenience only and concededly held in trust for Wilkes)

in defendant Fidelity Union Trust Company.[1] The state agency, plaintiff Essex County Welfare Board, brought suit in the Essex County Court to reach the bank account for reimbursement from the duplicated federal payments.[2] On the return of defendant's motion for summary judgment, it was agreed that the trial court would determine the matter without a jury on a stipulation of facts as if on final hearing. The sparse stipulation[3] was designed to present to the court only the basic legal question of whether plaintiff is barred from recovering any amount from the account by reason of a provision of the federal social security law, 42 *U.S.C.* § 407, which reads:

> The right of any person to any future payment under this subchapter [Subchapter II—Federal Old-Age, Survivors, and Disability Insurance Benefits—of Chapter 7—Social Security—of Title 42—Public Health and Welfare—of the United States Code] shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other

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[1] The bank was made a defendant in order to restrain withdrawals pending the litigation and has taken no part in the suit. Interim relief to that effect was allowed and the account balance is held in escrow pending the outcome of the action.

Since Wilkes is the only real party in interest, "defendant" will hereafter refer to him alone.

[2] Although plaintiff's complaint and the stipulation of facts, if read literally, give the impression that it claims a right to the whole amount of the lump sum social security payment, we understand that it quite properly asserts only a right to recoup admittedly overlapping payments to the extent of the amount of the federal benefits, as if they had been paid monthly during the duplicated period.

[3] The stipulation has been supplemented by additional information furnished by the parties (chiefly relating to the periods and amounts of benefits received from each source) during and after appellate arguments. Unfortunately this supplemental fiscal information is not in entire agreement, so we are unable to speak definitively of the precise total and period of the overlap and the exact relation of that amount to the sum on deposit in the bank account. Later references to this aspect of the case are to be read accordingly.

legal process, or to the operation of any bankruptcy or insolvency law.

The trial court held, 104 *N.J. Super.* 280 (Co. Ct. 1969), that plaintiff was barred from any recoupment as a matter of law by reason of a literal reading of section 407 regardless of the policies and equities involved. The Appellate Division affirmed "essentially for the reasons expressed" in the trial court opinion. 109 *N.J. Super.* 48 (1970). We granted plaintiff's petition for certification. 56 *N.J.* 480 (1970).

In August 1966 defendant applied to plaintiff[4] for benefits under the state program of assistance, provided for by *N.J.S.A.* 44:7-38 to -42 and administered by the county welfare boards, to any needy person who has attained the age of 18 but is less than 65 years of age and is permanently and totally disabled by reason of any physical or mental defect, disease or impairment other than blindness.

N.J.S.A. 44:7-39 prescribes that the assistance to be extended under this program shall in all other respects be governed by the provisions of the statutory sections dealing with old age assistance; *i.e.* assistance to persons who have attained the age of 65 years who lack adequate support, are unable to support themselves and are without relatives or other persons able or willing to support them. See *N.J.S.A.* 44:7-5. Defendant met all pertinent eligibility requirements.

Assistance to the aged needy, and so to the permanently and totally disabled as well, is granted solely on the basis of and only to the extent of need. *N.J.S.A.* 44:7-12 states that the county welfare board shall extend, to eligible persons, assistance "adequate to provide for their reasonable maintenance and well-being . . . with due regard to the conditions existing in each case, in accordance with the rules and regulations" of the state Division of Public Welfare in the Department of

[4] The application appears actually to have been a reapplication or a request for reopening defendant's case. He had previously received state disability assistance, which was terminated in 1965 because he was a patient in a county sanitarium. See *N.J.S.A.* 44:7-39(1).

Institutions and Agencies. See also *N.J.S.A.* 44:7-6. This requires a determination by the board of the amount needed by the particular eligible applicant to reasonably maintain himself, which is commonly referred to as the individual's budget. See New Jersey Categorical Assistance Budget Manual, § 608, "Budgeting Procedures." It further requires that, in fixing the dollar sum of assistance to be extended to him, allowance must be made for any actual (see New Jersey Categorical Assistance Budget Manual, § 402, "Available Resources"), but not potential (see New Jersey Categorical Assistance Budget Manual, § 407, "Potential Resources"), income from other sources received by him. The assistance then advanced is the difference between the budget and such income. See New Jersey Categorical Assistance Budget Manual, §§ 401.1 to 401.7, "Resources—General Considerations." See also *N.J.S.A.* 44:7-5(e). Once that figure is determined, the direction to pay it is mandatory, subject to future adjustment depending on changing circumstances. In this case plaintiff fixed defendant's need at $108 per month, with no offsetting other income. While we are not certain from the information furnished exactly when assistance payments in this amount were commenced or exactly how long they continued, it is apparent that they were made at least as of January 1, 1967 and continued until some month in the middle of 1968.

Such old age and disability assistance is not an outright grant or gift to the recipient, but only an "advance" subject to repayment. Thus *N.J.S.A.* 44:7-14 provides:

> (a) Every county welfare board shall require, as a condition to granting assistance in any case, that all or any part of the property, either real or personal, of a person applying for old age assistance, be pledged to said county welfare board as a guaranty for the reimbursement of the funds so granted as old age assistance pursuant to the provisions of this chapter. The county welfare board shall take from each applicant a properly acknowledged agreement

to reimburse for all advances granted, and pursuant to such agreement, said applicant shall assign to the welfare board, as collateral security for such advances, all or part of his personal property as the board shall specify.

See also New Jersey Division of Public Welfare, Manual of Administration § 2272, which details the mechanics of the reimbursement requirement. The section, along with *N.J.S.A.* 44:7-15, also provides that the filing of a notice of such agreement with the county recording office has the same force and effect as a judgment of the County Court, law division. The obvious purpose is to enable the board to obtain reimbursement for assistance advanced out of subsequently discovered or acquired real and personal property of the recipient. Defendant gave plaintiff such an agreement to reimburse under date of September 13, 1966.

At the time of defendant's application for state disability assistance, plaintiff obviously believed defendant was entitled to federal disability insurance benefits under the social security act and, according to the stipulation of facts, referred him to the Social Security Administration for the purpose of filing for such benefits. The record does not show either the date of such referral or the date of filing of the application. The exact situation is confusing because defendant had previously been receiving such federal benefits probably until May 1966. It is not clear why they ceased at that date. In any event, on August 20, 1968 he received from the Social Security Administration a check in the amount of $1864.20 (of which plaintiff promptly learned) representing retroactive social security disability insurance benefits, apparently for the period from May 1966 through January 1968 at the rate of $69.60 monthly and from February 1968 through June or July 1968 at a $78.70 monthly rate. There is no clear explanation for the delay in payment. Thus, at least from January 1967 through June or July 1968, defendant received the full amount of state disability assistance plus the monthly social security disability insurance benefits, although the latter was received in a lump sum and not each month

during the period.[5] It further consequently appears that the check covered federal benefits for a period (seemingly from May 1966 to January 1967) when defendant received no state assistance. This check was deposited in and constitutes the amount of the bank account previously referred to, which the lower tribunals held plaintiff could not reach by reason of 42 *U.S.C.* § 407.

Federal social security disability insurance benefits stand on quite a different basis than state disability assistance. They are one item of the social security benefits system, created, along with old-age and survivors benefits, in subchapter II of Chapter 7 (Social Security) of Title 42 (Public Health and Welfare) of the United States Code. 42 *U.S.C.* §§ 401-429. Disability benefits are specifically provided for in 42 *U.S.C.* § 423. Simplistically summarized, they represent outright grants, not subject to reimbursement, payable monthly, to all eligible persons (the eligibility requirements as far as age and disability are concerned are substantially the same as those for state disability assistance) at a rate computed in accordance with a general mathematical formula. As contrasted with state assistance, they are not based on and have no relation to the particular individual's need from the standpoint of the sum he requires for his reasonable maintenance. Both benefits are designed, of course, for the same general purpose—to furnish support to an individual, the federal to the extent allowed by the formula and the state to the full extent of his need as determined by his budget.

The answer to the question posed at the outset of this opinion depends upon whether Congress intended 42 *U.S.C.* § 407 to apply to the factual situation before us.

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[5] We understand defendant has been, since the time of the check, receiving monthly social security benefits regularly. When plaintiff learned of the retroactive check and the periodic payment of such benefits thereafter, it reduced his monthly disability assistance to the difference between the federal payment and his budget figure. The exact date of such reduction is not clear. Sometime in 1970 plaintiff learned defendant was also receiving $92 per month from the Veterans' Administration. The total of this figure and the social security payment exceeded defendant's budget, so plaintiff ceased making any state assistance payment to him.

Of fundamental importance in this connection is the interdependence and very close relationship between the state and federal disability programs. The primary point is that one-half of the funds for assistance under the state program, as well as a larger percentage of state administrative costs, are furnished by the federal government (the balance coming from state sources) by way of grants to the states. 42 *U.S.C.* §§ 1851-1855.

In order to obtain the federal contribution, the state plan for use of the money for the permanently and totally disabled must be approved by the federal authorities pursuant to standards and directions specified by them. See 42 *U.S.C.* § 1352. In other words, state assistance must be basically administered according to federal requirements.* The federal statute, 42 *U.S.C.* § 1352(a)(8), for example, requires the state agency, in determining need, to take into consideration any other income and resources of those claiming disability aid, subject to some exceptions not here pertinent. See Circular Letters Nos. 325 (June 1, 1967) and 800 (May 26, 1970), Division of Public Welfare, New Jersey Department of Institutions and Agencies.

Of even greater significance is the fact that the state, upon recovery of any amount by way of reimbursement, must account to the federal government for the latter's share in the same proportion as it was contributed. Federal Department of Health, Education and Welfare, Handbook of Public Administration: Part V, Fiscal Operations and Accountability, Accountability for Federal Funds Advanced, §§ 3340-3344 (1951). *N.J.S.A.* 44:7-15; New Jersey Department of Institutions and Agencies: Part V, State Plan for OAA, APTD and ADC Programs, Computation of federal, state and local share of funds collected or recovered, at 12-15. The federal

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*Our statutes contain a reciprocal provision, *N.J.S.A.* 44:7-42, directing the Commissioner of Institutions and Agencies "to issue all necessary rules and regulations and administrative orders and to do all other acts and things necessary to secure for the State of New Jersey the maximum Federal financial participation that is available with respect to a plan of assistance for the permanently and totally disabled . . . ."

government, therefore, has a very substantial stake in this suit.

In sum, the scheme is a predominantly federal program for assistance to needy disabled persons, with the federal social security insurance benefits payable without regard to need, and a state program of advancements supplementary thereto, under federal requirements and with federal contribution, to bring support to such persons up to the amount required for their reasonable maintenance, but subject to repayment.

In view of the entire scheme, it is unquestioned that, if an applicant for state disability assistance was at the time receiving monthly federal disability insurance benefits, the amount of the latter would have to be deducted from his budget to arrive at the amount of state assistance. Indeed, defendant concedes that such would have been required here had he received each month's portion of the lump sum federal payment contemporaneously with the state assistance advances. Realistically, what took place was to advance to defendant state disability assistance to the full amount of his budget until monthly federal payments began, so that he would, during the interim, have available the entire sum required for his living needs. Thus the funds plaintiff seeks to reach are accrued moneys, not current benefits necessary for defendant's present support and maintenance. It seeks reimbursement, in accordance with defendant's reimbursement agreement, for support it actually furnished when he needed it to the extent it would have been federally supplied if the monthly federal benefits had begun immediately. The equities are all with plaintiff.

We cannot agree with defendant's contention and the view of the lower tribunals that 42 *U.S.C.* § 407 bars plaintiff simply because the federal payments were made retroactively in a lump sum. We are convinced that the section was never intended to bar the government from recoupment in such a situation. Not only is defendant's argument contrary to the policies of the overall federal-state benefits scheme, but it runs counter to the rationale of another section of the social security act, 42 *U.S.C.* § 404. That section, in case of overpayment, directs the

federal authorities to "require such overpaid person or his estate to refund the amount in excess of the correct amount . . . ." (subject to certain qualifications not of significance here). 42 *U.S.C.* § 404(a)(1). There is no suggestion that this may not be accomplished by recovery out of the very benefits paid and is a clear indication to us that section 407 was not intended to bar the federal government in such a case. It should follow, therefore, that neither was the section intended to bar the state from seeking reimbursement, on behalf of the federal government as well as itself, to the extent of the overlapping federal payments.[7]

From the standpoint of precedent, the only cases we have discovered dealing with the precise situation here involved, *i.e.* payment of full state assistance, with an agreement to reimburse, pending the receipt of social security benefits, are three reported trial court decisions in Pennsylvania. *Commonwealth* v. *Thompson*, 22 *D & C 2d* 236 (Lancaster Co. Ct. 1960); *Commonwealth* v. *Garlick*, 26 *D & C 2d* 389 (Mercer Co. Ct. 1961); *Klaric Petition*, 27 *D & C 2d* 93 (Mercer Co. Ct. 1961). All held that the state was not barred, by reason of 42 *U.S.C.* § 407, from recovery of the overlapping payments out of the subsequent social security payment. They said in substance that the state had, in fact, paid an obligation of the federal government; that, if the recipient were allowed to retain the social security benefits he would in effect be receiving double benefits for the same period of time; and that allowance of the state's claim advanced, rather than defeated, the ends of the federal legislation.

There are, however, well reasoned and long accepted state court decisions reaching a similar result with respect to the effect of a substantially analogous exemption provision in the federal veterans benefits law, 38 *U.S.C.* § 3101(a). Involved were state claims against such benefits, paid to the guardian of an incompetent veteran and

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[7] New Jersey has an exemption statute with respect to state assistance advances substantially similar to 40 *U.S.C.* § 407. *N.J.S.A.* 44:7-35. As far as we know, it has never been urged that the section bars the state from obtaining reimbursement out of the very funds paid for state assistance erroneously or improperly advanced.

deposited in a bank account, for maintenance and care furnished the veteran in a state mental institution. The leading case is *In re Lewis' Estate*, 287 *Mich.* 179, 283 *N.W.* 21 (1938) (relied upon in *Garlick*, *supra*), which held that it could not have been the intention of Congress to bar the state in such a situation because veterans benefit payments were furnished for the purpose of making the means available to the guardian to obtain the very support which the state had furnished. Other decisions to the same effect are: *In re Bemowski's Guardianship*, 3 *Wis. 2d* 133, 88 *N.W. 2d* 22 (1958); *Department of Public Welfare* v. *Sevcik*, 18 *Ill. 2d* 449, 164 *N.E. 2d* 10 (1960); *Savoid* v. *District of Columbia*, 288 *F.2d* 851 (D.C. Cir. 1961); *State* v. *Bean*, 159 *Me.* 455, 195 *A.2d* 68 (1963). It is at least interesting to note that, although the veterans benefit act has been amended since *Lewis*, the exemption section has not been changed.

Defendant also raises two other points: (1) that the reimbursement agreement provision, *N.J.S.A.* 44:7-14, is narrowed by *N.J.S.A.* 44:1-95; and (2) that the reimbursement agreement is void for vagueness in not specifically stating what property of the individual a welfare board can reach. Both are so lacking in merit as not to require discussion.

We therefore conclude that plaintiff is entitled to recover from the bank account the amount of overlapping federal benefits. Since, as we have said, this amount cannot be accurately determined from the information before us, the matter must be remanded for that purpose and the entry of an accordant judgment.

The judgment of the Appellate Division is reversed and the cause is remanded to the Essex County Court for further proceedings as directed in this opinion. No costs.

SUPREME COURT OF THE UNITED STATES

No. 71-5656

DORIS PHILPOTT AND WILLIAM WILKES, PETITIONERS

v.

ESSEX COUNTY WELFARE BOARD

On petition for writ of Certiorari to the Supreme Court of the State of New Jersey.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

May 15, 1972.

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The Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-5656

DORIS PHILPOTT, ET AL., PETITIONERS

v.

ESSEX COUNTY WELFARE BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed in response to the Court's invitation to the Solicitor General to file a memorandum expressing the views of the United States.

QUESTION PRESENTED

Whether Section 207 of the Social Security Act, which prohibits attachment of social security payments, bars a State from attaching retroactively paid federal disability insurance benefits, when the attachment is made to recoup the portion of State disability benefits that had been paid in lieu of federal benefits during the period of retroactivity and is pursuant to the beneficiary's agreement to reimburse the State.

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STATEMENT

In 1966, the State of New Jersey, acting through respondent, began payment of disability assistance benefits to petitioner Wilkes (Pet. 3). In order to obtain this assistance he was required by New Jersey law to execute an agreement to reimburse the State for the amount of assistance benefits received (*ibid.*). In 1968, Wilkes was awarded retroactive disability insurance benefits of $1864.20 under Section 223 of the Social Security Act, and a check for that amount was issued to him (Pet. 4). Petitioner Philpott, acting as trustee for Wilkes, deposited the check in a bank, and respondent brought suit to reach the bank account for reimbursement under the agreement to reimburse (*ibid.*). Petitioners asserted that Section 207 of the Social Security Act, which prohibits the attachment of social security benefit payments, barred recoupment from the fund created by the federal payment (*ibid.*).

The Supreme Court of New Jersey permitted the attachment on the grounds that (1) the State assistance payments had in part been made in lieu of federal disability insurance benefits, and (2) the fund attached was not needed for Wilkes' current support (A. 11). The court held, however, that the State could obtain only the amount by which its payments would have been reduced if Wilkes then had been receiving federal disability payments (A. 14).

DISCUSSION

1. Section 207 of the Social Security Act, 42 U.S.C. 407, provides that "none of the moneys paid or pay-

ble or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process * * *." [1] The United States believes that the unqualified prohibition of Section 207 should not be subject to exceptions based on equitable considerations and therefore that the decision of the Supreme Court of New Jersey is erroneous. Section 207 is designed to assure that the full amount of disability benefits paid will be available for the use of the beneficiary; the decision of the Supreme Court of New Jersey to some extent weakens this protection.

2. The issue, however, does not appear to be of sufficient importance to warrant review. The operation of Section 207 has traditionally been noncontroversial and there has been little litigation over its meaning in the 35 years it has been on the books. There is no federal court decision dealing with an attachment of disability insurance payments.[2] Only two other state courts of last resort have considered the ambit of

[1] There is a single exception to this sweeping exemption. Section 6331 of the Internal Revenue Code of 1954, 26 U.S.C. 6331, makes subject to levy for Federal tax liability "all property and rights to property" of the person liable for the tax. Section 6334 of the Code, 26 U.S.C. 6334, limits exemptions from the levy to seven specific categories and provides that no other property or rights to property shall be exempt "[n]otwithstanding any other law of the United States". Both the Treasury Department and the Department of Health, Education, and Welfare recognize, accordingly, that social security benefits may be subjected to levy under the foregoing sections.

[2] The scope of Section 207 was considered in *Beers* v. *Federal Security Administrator*, 172 F. 2d 34 (C.A. 2), and *Ewing* v. *Gardner*, 185 F. 2d 781 (C.A. 6), reversed on other grounds, 341 U.S. 321. However, these cases involved only the right of a beneficiary's estate to benefits not collected prior to death.

Section 207; neither of them deals with the pre
issue here. *Century Indemnity Co.* v. *Mead*, 121
434, 159 A. 2d 325, held that benefits could no
reached by a judgment creditor; *Ponath* v. *Hed*
22 Wis. 2d 382, 126 N.W. 2d 28, held that benefits
subject to support payments. The question of rec
ment, on which the decision below appears to
ruling of first impression, is not of current importa

Moreover, the particular case involves a some
unusual factual situation. The equitable considerati
upon which the court below relied would not
with respect to ordinary creditors or to payments
current benefits. The decision of the Supreme Cour
New Jersey thus will have limited scope even w
respect to the attachability of disability ben
payments.

CONCLUSION

In this situation, it cannot be said that the case
of substantial current importance. Accordingly, t
petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.

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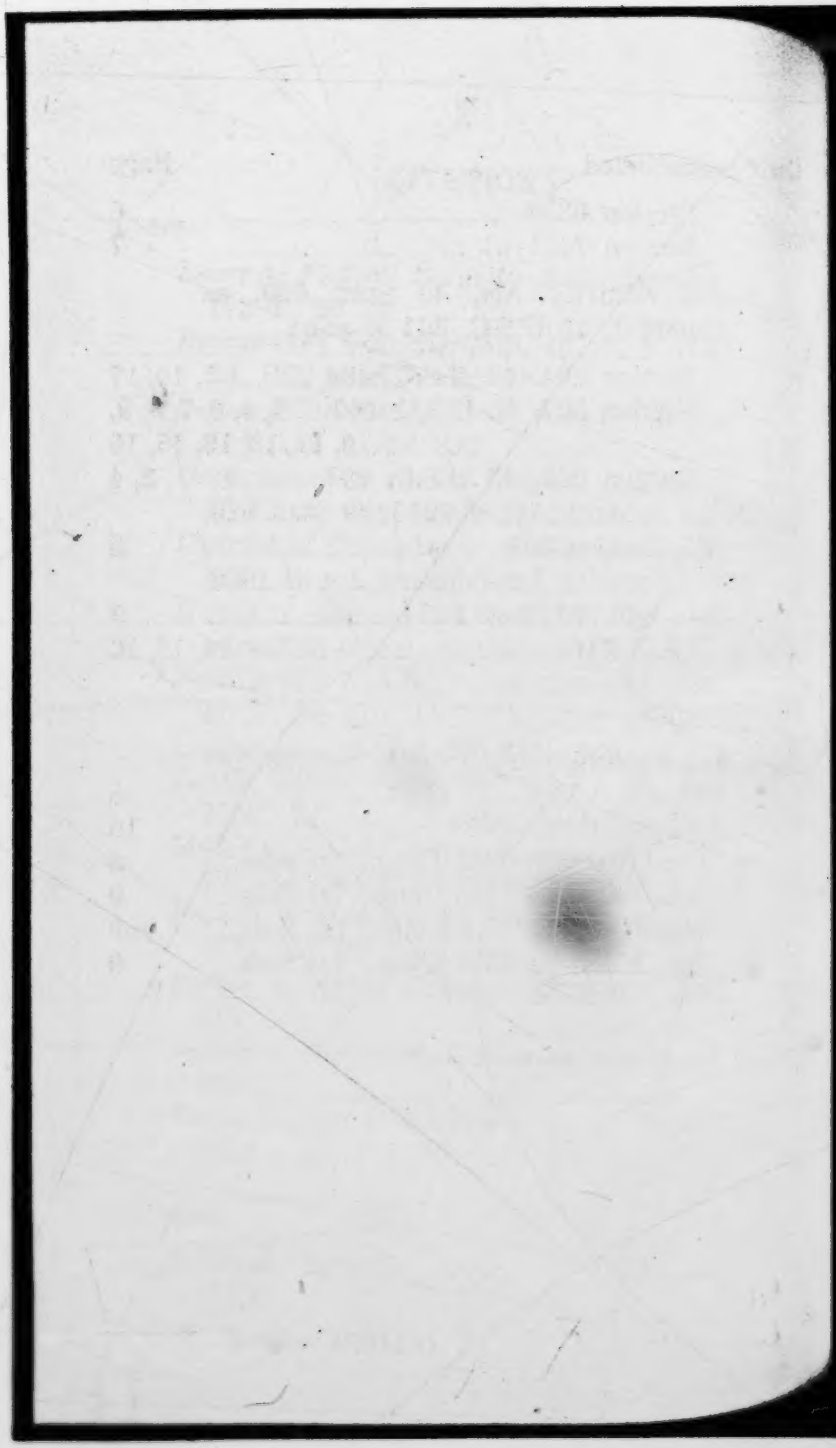

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT, ET AL., PETITIONERS

v.

ESSEX COUNTY WELFARE BOARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey is reported at 59 N.J. 75, 279 A.2d 806 (Pet. App. A). The opinion of the Appellate Division is reported at 109 N.J. Super. 48, 262 A.2d 227. The opinion of the trial court is reported at 104 N.J. Super. 280, 249 A.2d 639.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 12, 1971. On October 6,

1971, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to November 8, 1971. The petition was filed on November 1, 1971, and was granted on May 15, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether Section 207 of the Social Security Act, which prohibits attachment of federal old-age, survivors, and disability insurance benefits, bars a state from attaching federal disability insurance benefits retroactively paid to a beneficiary and deposited by his trustee in a bank account containing no other funds.

STATUTE INVOLVED

Section 207 of the Social Security Act, 49 Stat. 624, as amended, 42 U.S.C. 407, provides in relevant part:

> * * * [N]one of the moneys paid or payable or rights existing under this subchapter [relating to old-age, survivors, and disability insurance] shall be subject to execution, levy, attachment, garnishment, or other legal process * * *.

INTEREST OF THE UNITED STATES

Section 223 of the Social Security Act provides for payments of federal disability insurance benefits to alleviate the financial burdens of permanent and total disabilities. Section 207 of the Act protects against frustration of the purpose of these payments

by ensuring that the benefits paid will remain available to the disabled beneficiary. The United States has a substantial interest in this case, since its outcome will affect the extent to which the beneficiaries of federal disability insurance will have the full use of payments made under the Act.

STATEMENT

The State of New Jersey has established a program of financial assistance for persons who are permanently and totally disabled, based upon need. Under this program, the level of benefits is fixed by first determining the amount needed by the beneficiary reasonably to maintain himself and then subtracting from that amount the beneficiary's actual income from other sources (Pet. App. A, 5). As a condition of receiving assistance, a beneficiary is required to execute an agreement to reimburse the county welfare board, which administers the program, for all payments received thereunder (Pet. App. A, 6). The purpose of this agreement is "to enable the board to obtain reimbursement * * * out of subsequently discovered or acquired real and personal property of the recipient" (*ibid.*).

Petitioner Wilkes applied to respondent county welfare board for assistance under this program in 1966, and he executed the required agreement (Pet. 3). After determining Wilkes' monthly maintenance needs to be $108 and finding that he had no other income, respondent fixed his monthly benefits at that amount and began making assistance payments no

later than January 1, 1967 (Pet. App. A, 5). The payments would have been less if Wilkes was receiving federal disability insurance benefits under the Social Security Act, and respondent advised Wilkes to apply to the Social Security Administration for such benefits (Pet. 3).

In August 1968, Wilkes was awarded retroactive federal disability insurance benefits under Section 223 of the Social Security Act, 42 U.S.C. 423, from May 1966 through June or July 1968 (Pet. App. A, 7). These benefits were calculated on the basis of $69.60 per month for 20 months and $78.70 per month for 6 months, for a total of $1864.20 (*ibid.*). A check for that amount was issued to Wilkes (Pet. 4). Petitioner Philpott, acting as trustee for Wilkes, deposited the check in a bank account (Pet. App. A, 2). The amount of the check constituted the entire balance in the account (*ibid.*).

Respondent immediately brought suit to reach the bank account under the agreement to reimburse (*ibid.*). The trial court held that respondent was barred by Section 207 of the Social Security Act, 42 U.S.C. 407, from recovering any amount from the account (Pet. App. A, 3), and the Appellate Division affirmed (*ibid.*).

The Supreme Court of New Jersey reversed, holding that Section 207 does not bar attachment of the federal payment by respondent under the circumstances of this case. The court stated that the fund attached did not represent current benefits necessary for Wilkes' current support, that the monthly pay-

ments which had been made by respondent would have been reduced on account of the federal benefits had they been received concurrently, and therefore that "[t]he equities are all with [respondent]" (Pet. App. A, 11). The court further reasoned that the rationale of Section 204 of the Act, 42 U.S.C. 404, which permits recovery by the federal government in cases of overpayment, should be extended to permit recovery by respondent here, because the federal government contributes one-half of the funds for assistance under the state program and will be entitled to one-half of any state recovery in this suit (Pet. App. A, 9-10, 11-12). The court also stated that similar state claims had been honored under the federal veterans' benefits laws (Pet. App. A, 13-14).

Since respondent did not claim a right to the entire federal payment but only to the amount by which its own payments would have been reduced had the federal benefits been received currently rather than retroactively (Pet. App. A, 2, n. 2), and because the stipulated facts were ambiguous as to when respondent actually began making assistance payments (Pet. App. A, 3, n. 3), the court remanded the case for a determination of the period of overlap and the precise amount of respondent's claim (Pet. App. A, 14).

ARGUMENT

SECTION 207 OF THE SOCIAL SECURITY ACT BARS THE RESPONDENT FROM OBTAINING THE RETROACTIVE FEDERAL DISABILITY INSURANCE BENEFITS PAID TO THE BENEFICIARY AND DEPOSITED IN A BANK ACCOUNT.

Introduction and Summary

This case presents a difficult question of statutory interpretation. On its face, Section 207 of the Social Security Act appears to bar the State of New Jersey from obtaining the federal disability insurance paid retroactively to Wilkes. The language is sweeping and unqualified: "none of the moneys paid or payable under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process."[1] The amount paid to Wilkes as retroactive benefits was "moneys paid * * * under this subchapter," and the suit the state brought to reach this money in the bank account was an attempt to "subject [it] to * * * levy, attachment * * * or other

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[1] There is only one exception to the sweeping exemption of Section 207, and that arises under another statutory provision. Section 6331(a) of the Internal Revenue Code of 1954, 26 U.S.C. 6331(a), makes subject to levy for federal tax liability "all property and rights to property" of the person liable for the tax. Section 6334 of the Code, 26 U.S.C. 6334, limits exemptions from the levy to eight specific categories and provides that no other property or rights to property shall be exempt "[n]otwithstanding any other law of the United States." Both the Treasury Department and the Department of Health, Education, and Welfare recognize, accordingly, that social security benefits may be subjected to levy under the foregoing sections.

legal process." The statute, therefore, appears to bar the state's attempt to obtain this money.[2]

The law, however, frequently has declined to give broad and unqualified language and principles their full sweep when to do so would produce unfair or unjust results. Even such words as "none" and "no" do not always mean what they say.[3] And in the case of

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[2] Except for the court below in the present case, we know of no state court of last resort that has permitted attachment of social security benefits either paid or payable.

The case most in point, *Century Indemnity Co.* v. *Mead*, 121 Vt. 434, 159 A. 2d 325, held that Section 207 bars attachment by a judgment creditor not only of future social security payments but also of a bank account in which past social security payments had been deposited. *Ponath* v. *Hedrick*, 22 Wis. 2d 382, 126 N.W. 2d 28, held that under state law social security benefits are not includable as income in determining an individual's ability to pay for the support of a dependent relative; the court also held, however, that Section 207 did not preclude treating such benefits as income. The Texas Court of Civil Appeals, an intermediate appellate court, relied upon *dicta* in the two federal cases that have considered the Section (*Beers* v. *Federal Security Administrator*, 172 F. 2d 34 (C.A. 2), and *Ewing* v. *Gardner*, 185 F. 2d 781 (C.A. 6), reversed on other grounds, 341 U.S. 321, both discussed in footnote 6, *infra*, p. 13) in permitting a creditor to reach accumulated survivors insurance benefits held by a guardian of minor children. *Texas Baptist Children's Home of Round Rock* v. *Corbitt*, 321 S.W. 2d 610.

[3] *E.g.*, *Miller* v. *Standard Nut Margarine Company of Florida*, 284 U.S. 498 (interpreting the predecessor of section 7421 of the Internal Revenue Code of 1954, 26 U.S.C. 7421(a), which provided flatly that "[n]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," as nevertheless being subject to exception in cases of "extraordinary and exceptional circumstances").

spendthrift trusts, whose very purpose is to protect a beneficiary against his own improvidence by preventing his creditors from reaching rights under the trust, creditors who supply necessaries to the beneficiary have been permitted to recover therefor from the trust. See A.L.I. Restatement, *Trusts*, Section 157(b). Thus this Court should not assume that Congress imposed an absolute bar upon the attachment of retroactively paid social security moneys in any circumstance, merely because of the sweeping language of Section 207, if that result does not comport with the proper effectuation of the purposes and policies of the Social Security Act.

The legislative history of Section 207 provides no guidance in the resolution of this problem. The substance of the present language of Section 207 has been in the Social Security Act since it was first enacted in 1935.[4] The Committee reports on this provision merely paraphrase the language of the statute itself. H. Rep. No. 615, 74th Cong., 1st Sess., 21; S. Rep. No. 628, 74th Cong., 1st Sess., 32. Similarly, when Congress reenacted this provision in the Social Security Amendments of 1939, the Committees stated that the provision "provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process." H. Rep. No. 728,

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[4] The prohibition against attachment was originally contained in Section 208 of the Social Security Act of 1935, 49 Stat. 620, 625.

76th Cong., 1st Sess., 45; S. Rep. No. 734, 76th Cong., 1st Sess., 53.

Since the provision protected against the attachment of "moneys paid * * * under this title," it automatically covered new social security programs as they were enacted, without the necessity of explicit Congressional action. Thus, when the program of federal disability insurance was established by the Social Security Amendments Act of 1956, P.L. 880, 70 Stat. 807, payments thereunder also came under the protection of Section 207.

A fair reading of this history, we believe, suggests that in Section 207 Congress endeavored to protect social security beneficiaries from having their payments subjected to creditors' claims, but that it did not indicate any views with respect to whether particular exceptional circumstances might justify exceptions to this broad provision. Congress did not intend creditors to be able to satisfy their claims out of social security benefits. The purpose of the federal disability insurance program was to provide benefits to individuals who are seriously disabled and unable to work, and to their dependents, and thereby to alleviate the financial burdens of disability, including "the heavy weight of increased medical and hospital bills, nursing services and drugs, the loss of [the disabled individual's] regular income, and the continued financial responsibility for the support of his wife and the education and care of his children." 102 Cong. Rec. 13037 (1956). The provision in Section 207 that "none of the moneys paid * * * shall be

subject to * * * legal process" guards against frustration of this basic purpose by insuring that moneys designed for these vital purposes are used for those objectives and not diverted to meet the claims of creditors. Accordingly, if exceptions are to be created to the sweeping language of Section 207, they must be consistent with the foregoing purpose.

Assuming that Section 207 may admit of exceptions in special circumstances, the question in this case is whether the circumstances under which the State of New Jersey provided Wilkes with necessary support during the period when he was not receiving federal disability insurance payments entitles the State to reach those payments when retroactively made. Although the question is not free from difficulty, it is our conclusion that Section 207 bars the State from obtaining the money. It is our argument that the equitable considerations upon which the State relies are not sufficiently compelling to justify an exception here; that the fact that the moneys have been deposited in a bank account does not warrant a different result; and that Section 204 of the Act, which permits the Secretary to recover overpayment of benefits and on which the Supreme Court of New Jersey apparently relied, does not support the State's attachment of the federal payments. We discuss each of these points in turn.

A. The Equitable Considerations Upon Which the Supreme Court of New Jersey Relied Do Not Justify Permitting the State to Obtain the Federal Disability Insurance Benefits Paid to Wilkes.

In holding that the respondent Board could reach the federal disability insurance payments made to Wilkes, the Supreme Court of New Jersey pointed out that the Board had provided Wilkes with necessary funds for his support during the period when he was not receiving federal payments; that, as shown by the subsequent retroactive award of the payments, he was entitled to them during that period; that if Wilkes had currently received the federal payments to which he was entitled, the State's payments to him would have been smaller; and that the retroactive federal payment was not necessary for Wilkes' current support.[8] Although these are appealing considerations, we do not believe that they are sufficient to fit within any justifiable exception to the unqualified language of Section 207, particularly in favor of a State.

Under the New Jersey statute, the State had no choice but to provide financial disability assistance when, upon the filing of Wilkes' application for assistance in 1966, the State determined that he was

[8] There is nothing in the record that supports the latter statement. The record does not show Wilkes' medical expenses or general financial condition. The retroactive payment may have been necessary to meet his current living expenses, in whole or in part, including special needs arising from his disability.

disabled and had no other income. In these circumstances, it was required to pay him an amount equal to his need. Although the State required Wilkes to execute a reimbursement agreement, its purpose was "to enable the Board to obtain reimbursement * * * out of subsequently discovered or acquired real and personal property of the recipient" (Pet. App. A, 6).

The Board, therefore, was not volunteering any funds or services as an act of mercy or aid to help Wilkes, but was performing its statutory responsibilities to aid all disabled indigents without regard to future recoupment. Thus, no unfairness would result if the State were not permitted to reach Wilkes' benefits. The result of denying the State that right is to place it in the same position with respect to Wilkes as it occupies with respect to what probably are the great majority of the recipients of State disability aid, from whom the State is unable to obtain reimbursement. The fact that Wilkes executed a formal reimbursement agreement should not make any difference; despite that agreement, we think that the State should be in no better position than an ordinary creditor, and Section 207 precludes creditors generally from obtaining social security payments.

Indeed, any hardship the State might be thought to suffer from this result is substantially diminished by the fact that a portion of any recovery it might obtain would inure to the benefit of the federal government. As the Supreme Court of New Jersey recognized, since the federal government provides one-half

of the funds for assistance under the New Jersey program of disability relief, "the state, upon recovery of any amount by way of reimbursement, must account to the federal government for the latter's share in the same proportion as it was contributed" (Pet. App. A, 10).

B. Section 207 Covers Federal Benefits That Have Been Deposited in a Bank Account After Payment.

The fact that the moneys paid to Wilkes have been deposited in a bank account does not remove the moneys from the protection of Section 207. That section bars attachment of a bank account constituting the proceeds of a check made in payment of disability insurance benefits. *Century Indemnity Co.* v. *Mead*, *supra*. The statute expressly covers "moneys paid" * and it prohibits "execution, levy, [and] attachment," legal processes which, unlike garnishment, relate to assests in hand rather than to rights to future payments. Furthermore, protection of social security benefits deposited in bank accounts is necessary for

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*Despite this language, two courts of appeals have expressed, in *dicta*, the belief that the section covers only future payments. *Beers* v. *Federal Security Administrator*, 172 F. 2d 34 (C.A. 2); *Ewing* v. *Gardner*, 185 F. 2d 781 (C.A. 6), reversed on other grounds, 341 U.S. 321. Those cases involved efforts by personal representatives of deceased beneficiaries to recover the unpaid benefits which were accrued at the date of death; Section 207 was inapplicable because the property rights in question had passed to the representative by operation of law and were not being made subject to "execution, levy, attachment, garnishment, or other legal process * * *."

full effectuation of the Congressional intent that payments be insulated from creditors and remain available to beneficiaries.

This Court has reached the same conclusion in a series of cases involving veterans' benefits exemption statutes. In *Porter* v. *Aetna Casualty Co.*, 370 U.S. 159, the Court summarized (at 160-161) its decisions:

> Since 1873 it has been the policy of the Congress to exempt veterans' benefits from creditor actions as well as from taxation. In 1933 in *Trotter* v. *Tennessee*, 290 U.S. 354, the Court * * * held that the exemption spent its force when the benefit funds "lost the quality of moneys" and were converted into "permanent investments." This distinction was adopted by the Congress when the [World War Veterans' Act of 1924] was amended * * * to provide, *inter alia*, that such payments shall be exempt "either before or after receipt by the beneficiary" but that the exemption shall not "extend to any property purchased in part or wholly out of such payments." Thereafter in *Lawrence* v. *Shaw*, 300 U.S. 245 (1937), the Court held that bank credits derived from veterans' benefits were within the exemption, the test being whether as so deposited the benefits remained subject to demand and use as the needs of the veteran for support and maintenance required. It was noted that the allowance of interest on such deposits would not destroy the exemption. [Footnotes omitted.]

The Court held in *Porter* that 38 U.S.C. 3101, which provides that veterans' "payments * * * shall be exempt from the claim of creditors, and shall not be li-

able to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary," bars attachment by a creditor of benefits deposited in a savings and loan association on behalf of a veteran, on the ground that the deposit retained the "quality of moneys" and did not constitute a "permanent investment."

The same principle is also appropriate here: the protection extended by Section 207 to "moneys paid" should remain in force as long as the payment retains the "quality of moneys" and is not converted into a "permanent investment." Under this standard, this case is governed by *Lawrence* v. *Shaw*, 300 U.S. 245, which held that the immunity afforded veterans' benefits continued after their deposit in a bank account. Here, as in both *Lawrence* and *Porter*, the funds on deposit were readily withdrawable and retained the quality of money; there is no evidence that these funds, by their mere deposit, had been transformed into a permanent investment.[1]

In reaching a contrary result, the court below cited a separate line of veterans' benefit cases, dealing with the issue whether a State which has provided care and maintenance of an incompetent veteran is a "creditor" for purposes of 38 U.S.C. 3101. These decisions generally stand for the propositions that in-

[1] The court in *Lawrence* noted (at 250) that "deposits in bank may be made under a special agreement by which the deposits assume the character of investments and would lose immunity accordingly [but no] such agreement is shown here." There has been no showing of any such special agreement in this case either.

sofar as a State's claim relates to amounts expended before the appointment of a committee of an incompetent veteran, the State is a "creditor" and therefore may not recover from benefits subsequently paid to the committee, but that the State is not a "creditor" as to subsistence charges paid after appointment of the committee and may therefore recover such amounts from the committee. See, *e. g.*, *Savoid* v. *District of Columbia*, 288 F.2d 851 (C.A. D.C.); *District of Columbia* v. *Reilly*, 249 F.2d 524 (C.A. D.C.); *Department of Public Welfare* v. *Sevcik*, 18 Ill. 2d 449, 164 N.E. 2d 10; *In re Bemowski's Guardianship*, 3 Wis. 2d. 133, 88 N.W. 2d 22; *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21; *In re Feraraza's Estate*, 219 Cal. 668, 28 P. 2d 670.

Those decisions seem irrelevant to the issue in this case. Unlike 38 U.S.C. 3101, the statutory provision involved here (Section 207) does not refer to "claim of creditors" but rather interposes a broad bar against the use of any legal process to reach social security benefits. The construction of "creditor" relied upon in the veterans' benefit cases, itself somewhat strained, therefore would not justify an exception to Section 207.*

---

* As petitioners suggest (Pet. 6, n. 2), the veterans' benefits cases involve the use of current funds for the current support of an incompetent; those funds would have been used by the veteran himself or his committee for his care and maintenance if it had not been provided by the State. Those cases are thus factually distinguishable from the case here, where the State is not seeking to recover for any assistance it is currently providing and the beneficiary's trustee seeks to retain the funds for the use of the beneficiary.

C. Section 204 of the Act, Which Permits the Secretary to Recover Overpayments of Benefits, Does Not Support the State's Attachment of the Federal Payments in This Case.

The court below apparently relied in part upon Section 204 of the Act, 42 U.S.C. 404, which permits the Secretary to recover overpayments of old-age, survivors, or disability insurance benefits. This reliance is not warranted. There has been no overpayment of federal disability insurance benefits here; and the Secretary is not seeking recovery, directly or indirectly, of any such benefits. The pecuniary interest of the United States in the outcome of this case, resulting from the State's duty to remit to the United States its aliquot share of any recovery from beneficiaries (see pp. 12-13, *supra*), is not within the ambit of Section 204. That Section is limited to federal payments to beneficiaries and does not apply to federal contributions to state assistance programs.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of New Jersey should be reversed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DANIEL M. FRIEDMAN,
Deputy Solicitor General.

KEITH A. JONES,
Assistant to the Solicitor General.

WILMOT R. HASTINGS,
General Counsel,

EDWIN YOURMAN,
Assistant General Counsel,

ARTHUR ABRAHAM,
Deputy Assistant General Counsel,
Department of Health, Education and Welfare.

AUGUST 1972.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT and WILLIAM WILKES,

Petitioners,

v.

ESSEX COUNTY WELFARE BOARD,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

BRIEF FOR PETITIONERS

ROBERT CURTIS
Newark Legal Services Project
449 Central Avenue
Newark, New Jersey 07107

GEORGE CHARLES BRUNO
New Hampshire Legal Assistance
88 Hanover Street
Manchester, New Hampshire 03101

Counsel for Petitioners

Washington, D.C. • THIEL PRESS • (202) 393-0625

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Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

BRIEF FOR PETITIONERS

MEMORANDUM

Petitioners Doris Philpott and William Wilkes respectfully pray for relief against the judgment and opinion of the Supreme Court of New Jersey entered on July 12, 1971, reversing the judgment of the New Jersey Appellate Division and allowing attachment of petitioner Wilkes' Social Security benefits.

OPINION BELOW

The decision of the trial court is reported at 104 N.J. Super. 280, 249 A.2d 639 (County Ct. 1969), (Pet. App. A, 17). The decision of the Appellate Division affirming the trial court is reported at 109 N.J. Super. 48, 262 A.2d 227 (1970), (Pet. App. A, 26). The decision of the New Jersey Supreme Court, reversing the Appellate Division, was rendered on July 12, 1971, and is reported at 59 N.J. 75, 279 A.2d 806 (1971), (Pet. App. A, 41).

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 12, 1971. Mr. Justice Brennan granted a timely application to extend the time within which to petition for a writ of certiorari to November 8, 1971, and Wilkes' petition was filed prior to that date. A writ of certiorari was granted by this court on May 15, 1972. On June 26, 1972, this court granted an extension of 15 days for petitioner to file this brief.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether a state statute, allowing a county welfare board to exact repayment of properly received past welfare benefits, may override the immunity from attachment, execution, and levy of Social Security benefits paid or payable, provided for under 42 U.S.C. §407, in violation of the Supremacy Clause of the United States Constitution.

STATUTES INVOLVED

42 U.S.C. §407:

"The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

N.J.S.A. 44:1-95:

"If it is ascertained at any time that a person who has been assisted by, or has received support from a municipality or county has real or personal property over and above that necessary for his maintenance in whole or in part, if such poor person is maintained by the municipality and above that sufficient for his family, or if any such person shall die, leaving real or personal property, an action may be maintained in the county court of the county by the director of welfare of the municipality who has furnished or provided such assistance or support, or any part thereof, against such person or his estate, to recover the sums of money which have been expended by the municipality or county in the assistance and support of the person during the period for which support was furnished. . . ."

STATEMENT OF THE CASE

On August 2, 1966, petitioner Wilkes applied for public assistance benefits under the New Jersey state program for permanent and total assistance. This program is administered by the respondent, the Essex County Welfare Board. Petitioner qualified for benefits and began receiving monthly benefits under the state program. In New Jersey, however, "moneys paid by county welfare

boards are loans or advances and are not outright gifts to the poor. The Legislature determined as a matter of policy that such welfare payments may only be made upon condition that the recipient execute a reimbursement agreement." 249 A.2d, at 641. Thus in accordance with New Jersey law, petitioner executed an "Agreement to Reimburse," (Pet. App. A, 4) which under New Jersey law has the force of a judgment for the amount of welfare benefits received. 262 A.2d, at 228.

At the time that the petitioner applied for state welfare benefits, the Essex County Welfare Board referred him to the Social Security Administration for the purpose of filing for possible benefits under the Federal Disability Benefits law. For reasons that do not appear in the record, petitioner was not declared eligible for benefits under the federal law and received no federal benefits for two years. In August, 1968, petitioner received a check for $1,864.20 from the Social Security administration constitution a retroactive award for disability payments. The Essex County Welfare Board attached the entire check the same day that petitioner received it, seeking to collect under petitioner's Agreement to Reimburse the amount of the welfare benefits it had paid out (Pet. App. A, 7). Despite the fact that there was some question whether the Essex County Board's claim involved the full amount of the Social Security benefits, the Board attached the whole check, and brought this suit for an order directing the bank in which the money had been deposited to pay the money to the Board. Shortly thereafter, respondent reduced and then terminated the petitioner from welfare assistance.

The petitioner raised the explicit language of 42 U.S.C. §407 as a bar to respondent's suit.[1] The trial court held that section 407 did bar the instant suit and entered judgment in favor of petitioner on the basis of a lengthy and well-reasoned opinion, which concluded:

> If a relative or neighborhood grocer or a charitable institution who advanced funds or credit for the maintainance and support of an individual would be barred from recovery out of the federal funds, why should a welfare board be in any better position? The mere coincidence that the claimant is a public body cannot dictate a contrary result. In the absence of any exception in the statute demonstrating such an intent, the will of Congress must be enforced." 249 A.2d, at 643.

The Appellate Division affirmed the trial court's holding that federal law barred the present suit:

> [W]e conclude that the immunity from attachment, execution and levy of Social Security benefits paid or payable, provided for under 42 U.S.C. §407, immunized from seizure by the Essex County Welfare Board the lump sum benefits received by Wilkes from the Social Security Administration. The reimbursement agreement signed by Wilkes has the force of a judgment, N.J.S.A. 44:7-14; but enforcement of that judgment by the Welfare Board is subject to the same limitations expressed in the paramount Federal law, 42 U.S.C. §407, as in the case of any other general judgment." 262 A.2d, at 228.

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[1] As this Court has recognized, section 407, if applicable, exempts Social Security benefits from creditors even though their form has been converted from a check payable to the recipient to a bank account belonging to him. *Lawrence v. Shaw*, 300 U.S. 245 (1937); *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. 159 (1962).

Reversing the Appellate Division, the New Jersey Supreme Court created an exception to the plain and unambiguous language of 42 U.S.C. §407, essentially on the equitable theory that if petitioner had been receiving his Social Security benefits as they fell due, the Essex County Welfare Board would not have had to pay full welfare benefits to the petitioner.

This Court granted a writ of certiorari on May 15, 1972.

ARGUMENT

I. THE PLAIN AND UNAMBIGUOUS LANGUAGE OF 42 U.S.C. §407 PROHIBITS ANY "EXECUTION, LEVY, ATTACHMENT, GARNISHMENT, OR OTHER LEGAL PROCESS" UPON ANY SOCIAL SECURITY BENEFITS BY ANY HOSTILE CLAIMANTS.

The meaning of 42 U.S.C. §407[2] is clear on its face. Indeed, its language is so absolute and non-controversial that this is the first reported case involving this issue to come before this Court since the passage of the Social Security Act in 1935. The trial court had no difficulty in arriving at the correct decision. It held:

> The intent of Congress is clear, namely to protect the recipient from the attack of creditors before and after the moneys are paid, and to permit him or his dependents to obtain the necessities of life. As long as the fund is not converted to a permanent investment, its mere deposit in a bank for use by the recipient does not expose it to attachment or levy

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[2] Section 407 provides a two-fold protective shield. It prohibits a Social Security recipient from "assigning or transferring" any rights to his insurance *before* actual receipt of his payments and it prohibits a hostile claimant from "levying or executing" upon the Social Security proceeds *after* actual receipt.

by creditors. 249 A.2d at 641 (County Court 1969) 104 N.J. Super. 284.

The finding was upheld in the Appellate Division of the New Jersey Superior Court. 109 N.J. Super. 48, 262 A.2d 227 (1970). The New Jersey Supreme Court later reversed this decision,[3] 59 N.J. 75, 279 A.2d 806 (1971) based on its belief that recovery of money "advanced" by the respondent to the petitioner would be just under the circumstances.[4]

---

[3]The New Jersey Supreme Court's opinion devotes considerable space to discussion of two irrelevant points: (1) the relationship of federal and state disability benefit programs and (2) certain decisions under the Veteran's Administration Act. As pointed out in the text, the first of these essentially involves the question whether the state "ought to be entitled to recover benefits paid in the context of a state program, when federal payments are subsequently forthcoming. No one questions in this suit the validity or equity of such repayment. But that question simply cannot affect the decision whether to honor the explicit terms of a federal statute. Second, the Veterans Administration cases are inapposite because the wording of the exemption provisions as well as the purposes of the statutes differ, and because the factual situations of the cases under the Veteran's Administration were critically different: in each, the veteran involved was under a legal disability and *unable* to manage his own affairs, thereby necessitating the appointment of a guardian. Under such circumstances, the functioning of a statute prohibiting assignment of benefits or execution on those benefits by hospitals and others aiding the incompetent constitutes a question completely different from that in the present case.

[4]Footnote 2 as well as the precise holding of the New Jersey Supreme Court makes clear that its decision was based entirely on its appraisal of the justness of the underlying debt. In that footnote, the Court noted that the respondent's complaint asserted a right to the entire lump sum social security payment, but the Court reduces that claim to "admittedly overlapping payments to the extent of the amount of the federal benefits, as if they had been paid monthly during the duplicated period." As the Court's opinion makes clear, it thought that this was a fair resolution. However, there is no legal basis whatsoever for such a ruling. The New Jersey statute involved, N.J.S.A. 44:1-95, authorizes a county

There does not appear to be excessive information regarding §407 by way of legislative history. Persons participating in the drafting of this Section, however, recognized that "Congress intended the exemption of attachment in Social Security to be unqualified and absolute." See letter of Wilbur Cohen, dated June 22, 1972, Appendix A.

> It was generally understood, without any exception, that the idea of making a payment under the social security program would be a statutory right, and payment would not be subject to any other legal process whatsoever, except as provided specifically in the law.
>
> The impact of the depression of 1929-33 was uppermost in the minds of both the drafters of the legislation and the legislators. Many individuals had lost their savings, homes, business, pensions and other resources. The intent of Congress was to provide a very modest payment, but for that payment to be as certain as human institutions and statutory law could make it. The intent was to provide a guaranteed payment which would arrive each month without any possibility of intervention by any third party. This was the only way to overcome the uncertanties and difficulties which the depression had brought which resulted in so much unsatisfaction, humiliation, and financial difficulties for millions of persons who had counted on their economic security.

---

welfare board to sue for reimbursement of *all* moneys it paid to a recipient if the recipient later acquires any assets, not just the proportion suggested by the New Jersey Supreme Court. New Jersey statutory law creates no distinction based on overlapping federal and state benefits, and there is no discussion in the New Jersey Supreme Court's opinion of how such a distinction can bear upon the relationship of N.J.S.A. 44:1-95 and the clear immunity from levy granted by 42 U.S.C. §407.

There is absolutely no question in my mind that the Congress intended the exemption of attachment in social security to be unqualified and absolute. *Id.*

Administrative interpretations of §407 by the Social Security Adminstration support the absolute immunity of Social Security benefits from legal process:

> *Transfer or Assignment.*—The Administration shall not certify, as provided in §404.968, any amount for payment to an assignee or transferee of the person entitled to such payment under the Act, nor shall the Administration certify such amount for payment to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person entitled to the payment under the Act, 20 C.F.R. § 404.970 (July 1968).

This position was reaffirmed by the United States in the Memorandum as *Amicus Curiae* at the time Wilkes filed his Petition for a Writ of Certioriari.[5]

Aside from the policy question presented, the Welfare Board concedes the unambiguous meaning of §407 as well.

Section §407 establishes a clear, unambiguous policy of Congress that Social Security benefits are to go to the recipient unobstructed and to accrue to his benefit, not to the benefit of his creditors. The purposes of the exemption—to assure the support and security of the recipient; to allow him to manage his own affairs with

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[5] "The United States believes that the unqualified prohibition of Section 207 should not be subject to exceptions based on equitable considerations and therefore that the decision of the Supreme Court of New Jersey is erroneous. Section 207 is designed to assure that the full amount of disability benefits paid will be available for the use of the beneficiary: the decision of the Supreme Court of New Jersey to some extent weakens this protection," at p. 3.

independence and dignity; and to prevent the creation of poorhouses—would be totally frustrated by permitting the invasion of the protected funds involved here.[6] For the Court to allow this decision to stand would allow a state court to advance the interests of its own state treasury at the expense of a clearly stated Congressional policy.

Petitioner submits that this Court's task is clear. The intention of Congress may be ascertained from the explicit language used in the statute. Where the language of the statute is plain and unambiguous, as in this case, there is no occasion for construction, and the statute must be given effect according to its plain and obvious meaning. *Ex Parte Collett*, 337 U.S. 55 (1949).

II. THERE IS NO EXCEPTION TO THE ABSOLUTE AND UNQUALIFIED IMMUNITY OF SOCIAL SECURITY BENEFITS UNDER §407.

This Court cannot read exceptions into legislation where no exceptions were intended. Nor can it engraft artificial distinctions into a statute that is clear on its face for the purpose of achieving a particular policy result,[7] no matter how laudable that purpose might be.[8]

---

[6]The facts of this case demonstrate the need for the protection conferred on social security benefits by Section 407. Here the Board indiscriminately attached the petitioner's entire social security check, even though the courts of New Jersey have found that the Board is not entitled to the entire amount.

[7]*See Hilton v. Sullivan*, 334 U.S. 323, 339 (1947) wherein the Court held that a question pertaining to the wisdom of a policy embodied in a Congressional enactment is not for the Court to determine.

[8]One writer who has given the question of recovery considerable thought, has reached the following conclusions:

> The Nixon Administration has recommended that Congress prohibit all recoveries in the federally-funded cash assistance programs. Similar proposals have been made in several state capitals. This study supports the wisdom of these recom-

Social Security benefits have survived since their birth in 1935 without comprising the integrity of their absolute immunity from legal process.

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mendations and suggests that they should be extended to prohibit all recovery in MA and GA. It is also recommended that if Congress adopts a new method of welfare financing, with federal funds providing a minimum income in the cash assistance programs, federal law should prohibit recovery of all supplemental payments made by the states.

Recovery may have been, a justifiable policy in the Nineteenth Century when deterrence was a major objective or even before 1956, when rehabilitation became a national welfare goal. But today, the social costs produced by recovery cannot be justified by the small budgetary savings which amount to less than 1% of the annual sum spent on welfare. Even in the context of a single state or program, the savings are not significant, and the two methods required to make the process more than a nickel and dime operation—real estate liens and lump sum recoveries—drastically escalate the social costs.

The evidence indicates that the overall cost-effectiveness ratio of recovery will become even more unfavorable in the decades ahead. The long-term trend of declining "profits" from recovery is likely to continue, particularly in the Northern states where most recovery activity is now concentrated. At the same time, social costs will grow as the nation increases its commitment not only to rehabilitate those with the capacity to become self-supporting, but also to ameliorate the condition of the aged and the disabled for whom rehabilitation is not feasible.

This is not to say that all of the social welfare arguments advanced in support of present recovery practices are completely without merit. The "double benefit" theory used to justify lump sum recoveries is persuasive. Nevertheless, it is believed that the social costs produced by recoveries before death are greater than the inequities the "double benefit" theory is intended to prevent. Similarly, the objective of encouraging people to find alternatives short of welfare is desirable, but the justification overlooks the actual impact of deterrence on the lives of those deterred. The rest of the social welfare arguments in support of recovery either ignore substantial social costs, turn on mistaken factual assumptions or rest on unacceptable poor law judgments about the poor and the proper function of a welfare system.

The consideration which should resolve all doubts about recovery is the unfairness of requiring the welfare poor to

Millions of people receive Social Security benefits–from APTD (Aid to Persons with Permanent and Total Disabilities) to OAA (Old Age Assistance) all of which are, in effect, earned insurance benefits determined by the length of time a person worked and paid Social Security taxes. In all of these programs, Congress has declared that the moneys received were to benefit the recipient–not his creditors. Such a policy in no way depends upon the identity of the creditor (e.g. government or non-government) or the validity or justness of the underlying debt. If courts are to be allowed to create exceptions on the basis of their appraisal of the equities of the situation (see 279 A.2d 811 of the New Jersey Supreme Court's opinion), the Congressional policy designed to benefit the millions of Social Security recipients will be jeopardized.

Further, if this Court does create an "exception" to the explicit language of §407, what standards will it establish? Would the "exception" pertain only to welfare recovery schemes, or will other governmental units, federal and local, demand equal consideration as well? Lastly, is there an accurate measuring stick to determine which non-governmental claimants are voluntary or involuntary creditors?[9]

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repay while billions of dollars in subsidy are paid unconditionally each year to corporations and individuals far better able to repay than welfare recipients and their families. (Citations Omitted)

Baldus, David C. "Welfare Is A Loan: The Recovery of Public Assistance in the United States," 24 Stanford Law Review–(June, 1972).

[9]For example, is a private hospital which admits and treats a person on Social Security who is ill, a voluntary or involuntary claimant under the distinction the respondent wishes this Court to create? Would such a court rule be the first step in sweeping away the security elderly persons have enjoyed until now regarding the immunity of their Social Security benefits from attack.

If this one "exception" is created, applications for others will surely follow, and litigation involving §407 will multiply, permeating both federal and state courts at all levels. Each special interest, government and non-government, voluntary and involuntary, can be expected to fight for its own "exception" to the Act. Moreover, arising out of the morass of any judicially created "exception" to the express language of a statute is always the possibility that standards applied for the exception may be as arbitrary as the "exception" itself.[10]

This Court has re-emphasized the sound view that it may not legislate:

> We do not decide today that the [state law] is wise, that it best fulfills the relevant social and economic objectives that [the State] might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. *Jefferson v. Hackney* 40 L.W. at 4590 (Decided May 30, 1972), citing *Dandridge v. Williams*, 397 U.S. at 487. See also the dissent in *Furman v. Georgia*, 40 L.W. at 4968 (June 29, 1972) wherein four Justices expressed the opinion that the Court's "traditional deference to the legislative judgment must [not] be abandoned."

---

[10] A further consideration is the thought that most persons receiving social security are not in a position to engage in protracted litigation. Many cannot afford lawyers, the time involved nor the luxury of tying up their needed Social Security benefits.

It is for the same reason expressed in these cases that this Court cannot second-guess Congress over the unequivocal meaning of Section 407.

Petitioner Wilkes concurs in the view of Mr. Justice Rehnquist who stated that the Court "cannot accept appellants' invitation to change this long-standing statutory scheme simply for policy considerations reason of which we are not the final arbiter." *Id.*

In short, the Welfare Board is no different than any other hostile claimant. As the trial court observed,

> Although the claim of the Essex County Welfare Board serves as a valid social purpose in enforcing the policy of repayment espoused by the New Jersey Legislature, I am unable to find in the federal statute or the cases interpreting the same any sound basis for concluding that the board is not a creditor subject to the same limitation as other creditors. The distinction made by other courts between "voluntary" and "involuntary" creditors is an artificial one which has no support in the pertinent legislation. There would appear to be no logical basis for treating the board any differently from any other person or organization who advanced moneys to the indigent individual for his personal needs" 104 N.J. Super. at 288, 249 A.2d at 643.

Pursuing this logic, the court correctly held,

> If a relative or a neighborhood grocer or a charitable institution who advanced funds or credit for the maintenance and support of an individual would be barred from recovery out of the federal funds, why should a welfare board be in any better position? The mere coincidence that the claimant is a public body cannot dictate a contrary result. In the absence of any exception in the statute demonstrating such an intent, the will of Congress must be enforced. *Id.*

Since the New Jersey Statute[11] granting reimbursement to county welfare boards conflicts with §407, the former must yield to paramount federal law so as to afford and retain the exemption of Social Security benefits from attachment, execution or other legal process. U.S. Constitution, Art. VI, cl.2; *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hill v. State of Florida ex rel. Watson*, 325 U.S. 538 (1945).

CONCLUSION

For the reasons stated above, this Court should reverse the judgment and opinion of the Supreme Court of New Jersey.

Respectfully submitted,

ROBERT CURTIS
Newark Legal Services Project
449 Central Avenue
Newark, New Jersey 07107

GEORGE CHARLES BRUNO
New Hampshire Legal Assistance
88 Hanover Street
Manchester, New Hampshire 03101

Counsel for Petitioners

[11] N.J.S.A. 44:7-14; N.J.S.A. 44:1-95.

APPENDIX "A"

THE UNIVERSITY OF MICHIGAN
SCHOOL OF EDUCATION
Office of the Dean
Corner East and South University Avenues
Ann Arbor, Michigan 48104
Telephone (313) 764-9470

June 22, 1972

Mr. Paul Aiken
New Hampshire Legal Assistance
795 Elm Street
Manchester, New Hampshire

Sir:

You have asked for my understanding of the legislative history of section 207 of the Social Security Act relating to the exemption of social security benefits from attachment and "other legal process."

I was a member of the staff of the President's Committee on Economic Security in 1934-35 responsible for following the legislative activity of the bill through the Congress.

It was generally understood, without any exception, that the idea of making a payment under the social security program would be a statutory right, and payment would not be subject to any other legal process whatsoever, except as provided specifically in the law.

The impact of the depression of 1929-33 was uppermost in the minds of both the drafters of the legislation and the legislators. Many individual had lost their savings, homes, business, pensions and other resources. The intent of Congress was to provide a very modest payment, but for that payment to be as certain as human institutions

and statutory law could make it. The intent was to provide a guaranteed payment which would arrive each month without any possibility of intervention by any third party. This was the only way to overcome the uncertainties and difficulties which the depression had brought which resulted in so much unsatisfaction, humiliation, and financial difficulties for millions of persons who had counted on their economic security.

There is absolutely no question in my mind that the Congress intended the exemption of attachment in social security to be unqualified and absolute.

Sincerely,

/s/ Wilbur J. Cohen
Dean

WJC/as

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BRIEF FOR THE RESPONDENT, ESSEX COUNTY WELFARE BOARD

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey is reported at 59 N.J. 75, 279 A.2d 806. The opinion of the Appellate Division is reported at 109 N.J. Super. 48, 262 A.2d 227. The opinion of the trial court is reported at 104 N.J. Super. 280, 249 A.2d 639.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 12, 1971. On October 6, 1971, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to November 8, 1971. The petition was filed on November 1, 1971, and was granted on May 15, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1257 (3).

QUESTION PRESENTED

Whether a state welfare agency which had advanced monthly disability assistance may recoup, out of a subsequent, retroactive, lump sum federal social security disability insurance benefits payment, an amount representing duplication of benefits received.

STATUTE INVOLVED

Section 207 of the Social Security Act, 49 Stat. 624, as amended, 42 U.S.C. 407, provides in relevant part:

> * * * [N] one of the moneys paid or payable or rights existing under this subchapter [relating to old-age, survivors, and disability insurance] shall be subject to execution, levy, attachment, garnishment, or other legal process * * *.

STATEMENT OF FACTS

The respondent adopts the Statement of Facts set forth in Petitioner's Brief with the following exceptions:

1. The reason that petitioner did not receive his Social Security Benefits as they became due was that the Social Security Administration had withheld benefits pending a newer address for him and the check was released when they received the new address. (A. 28).

2. The petitioner did not deposit the Social Security check in an account in his own name but in the name of Doris Philpott. (A. 15-16).

ARGUMENT

I. THE LANGUAGE OF SECTION 207 OF THE SOCIAL SECURITY ACT SHOULD NOT BE CONSTRUED TO BE AN ABSOLUTE BAR TO RECOVERY WITHOUT REGARD TO THE FACTS OF THE PARTICULAR CLAIM.

It is conceded that if the Statute in question were applied literally without consideration of the particular factual situation, the Welfare Board would be barred from recovery. However, no statute should be interpreted in a vacuum. Courts exist for the very purpose of interpreting statutes and determining applicability to particular facts. As is stated in the Brief for the United States (pp. 7-8) even such words as "none" and "no" do not always mean what they say and an absolute bar against attachment of the retroactive benefits should not be assumed if the result does not comport with the purposes and policies of the Social Security Act.

Although the letter reproduced as Appendix "A", in Petitioner's Brief sets forth the writer's opinion that the Congress intended the exemption of attachment to be unqualified and absolute, the legislative history provides no guidance in the resolution of the present issue (Brief for the United States, p. 8). In the absence of such history, the purposes and policies of the Social Security Act outline the field upon which the present issue may be determined. The purpose of the federal disability insurance program was to alleviate the financial burdens of disability. 102 Cong. Rec. 13037 (1956). There is no conflict between such purpose and the disability program administered by the Welfare Board. The Welfare Board program is, in substance, basically a federal program under the provisions of the Social Security Act operating pursuant to federal standards and requirements and with substantial (50%) federal funding for assistance grants. Any recovery enures to the

benefit of the federal government in proportion to its contribution. Federal Department of Health, Education and Welfare, Handbook of Public Administration: Part V, Fiscal Operations and Accountability, Accountability for Federal Funds Advanced, §§3340-3344 (1951).

The State legislation serves the same primary purpose as the federal disability assistance program – to relieve the financial burdens of disability. The distinction is that the Social Security payments are calculated without reference to the needs of the recipient so that petitioner was entitled to $69.60, later increased to $78.70 per month, from Social Security, and to $108.00 per month (excluding Social Security benefits) from Welfare. If he had received his Social Security benefits on a current basis, his monthly assistance from welfare would have been reduced by that amount. In the absence of the current Social Security benefits, the Welfare Board advanced monies against petitioner's needs. If petitioner prevails, he would then, for the overlapping period, receive benefits from both sources.

Petitioners' Brief (footnote 2, page 6) refers to the statute in question as a two-fold protective shield. While it was certainly the intent of the Congress to provide such a shield in the ordinary factual situation, petitioner here is using the statute as a sword to retain duplicate benefits by his own failure or neglect to notify Social Security of his current address. What petitioner seeks is a license for any recipient of Social Security benefits to cause such benefits to be withheld for that or any similar reason, apply for Welfare assistance, and then some time later cause a retroactive Social Security award to be made for the period in question, so as to enable the recipient to receive duplicate benefits. It is respectfully submitted that such conduct does not serve the purposes of Social Security, whether under the federal disability act or the welfare program and that, if a literal reading of the statute supports such a course of action, the statute should then be construed, in such exceptional situations, to prevent duplication of benefits.

The Welfare Board by meeting petitioner's needs in the absence of his Social Security benefits fulfilled the purpose of the Social Security Act – to alleviate the financial burdens of disability. There is a well-reasoned line of cases construing a similar exemption under the Veterans' Act, 38 U.S.C. 3101,

which permits invasion of veterans' benefits by governmental agencies providing for their care and support. *In re: Lewis' Estate*, 287 Mich. 179, 186; 283 N.W. 21, 24 (1938); *Department of Public Welfare v. Sevcik*, 18 Ill. 2d. 449, 164 N.E. 2d. 10 (1960). While the Courts admittedly strained to exclude the governmental agencies from the classification of "creditors", the justification is applicable to the present case – specifically that those necessities for the recipient to subsist are subject to a different classification when provided by governmental agencies.

II. SECTION 207 OF THE SOCIAL SECURITY ACT SHOULD NOT BE EXTENDED TO COVER BENEFITS DEPOSITED IN A BANK ACCOUNT OF A THIRD PARTY AFTER PAYMENT.

There is no dispute that the immunity covering veterans' benefits continues after their deposit in the veteran's bank account. *Porter v. Aetna Casualty Co.*, 370 U.S. 159 and that such protection should be equally applicable to social security benefits. However, the instant case goes one step further. The Complaint (Pet. App. A 2) alleged:

> "5. Defendant, William Wilkes, together with the defendant, Doris Philpott, entered into a plan to conceal said lump sum payment by having William Wilkes endorse said Social Security check, and depositing same in an account maintained by Doris Philpott. . . .
>
> 6. Said transfer of funds to the defendant, Doris Philpott, was purposedly made to conceal said funds and to defraud the Essex County Welfare Board of its lawful rights to same."

The Answer (A. 8) admitted that the check was deposited in an account maintained by Doris Philpott and denied the other pertinent allegations.

The Court in *Porter* (at 160-161) held that the test of the bank account being within the exemption was whether the

benefits remained subject to demand and use as the needs of the veteran for support and maintenance required. By depositing the funds in the name of a third party, the funds were no longer readily withdrawable by and subject to the demand and use of the recipient in the instant case and any exemption from legal process should not be extended to cover same.

III. THE PETITIONER, AS A MATTER OF GENERAL EQUITY, SHOULD NOT BE ENTITLED TO RETAIN DUPLICATE BENEFITS.

Not only was the petitioner directed to apply to Social Security by the Welfare Board, and would he receive duplicate benefits if he were to prevail, but he would be rewarded by virtue of his own deficiencies in not reporting his change of address to Social Security, by failing to notify the Welfare Board of his receipt of the retroactive award and attempting to conceal same. Nor would petitioner be deprived of anything to which he should be entitled if the Social Security benefits were paid as they became due.

The only injured parties are the Essex County Welfare Board which paid an obligation of the federal government and the federal government ifself which ended up paying both Social Security and Welfare assistance for the same period.

Equity and good conscience have long been the test in cases for recovery of Social Security overpayments. *Green v. Secretary of Health, Education and Welfare*, 218 F. Supp. 761, (D.C.) *Gettinger v. Celebrezze*, 218 F. Supp. 161 (S.D.N.Y.), aff'd 330F.2d. 959.

In the words of the New Jersey Supreme Court, "(T)he equities are all with plaintiff." (A. 48).

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of New Jersey should be affirmed.

Respectfully submitted,

RONALD REICHSTEIN
JOSEPH E. COHEN
Counsel for Respondent

September, 1972.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT, *et al.*,
Petitioners,

v.

ESSEX COUNTY WELFARE BOARD,
Respondent.

On Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR STATE OF NEW JERSEY AS *AMICUS CURIAE*

GEORGE F. KUGLER, JR.,
Attorney General of New Jersey,
State House Annex,
Trenton, New Jersey, 08625.

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel and on the Brief.

JOAN W. MURPHY,
Deputy Attorney General,
On the Brief.

Advocate Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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v.

ESSEX COUNTY WELFARE BOARD,

Respondent.

On Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR STATE OF NEW JERSEY AS *AMICUS CURIAE*

Interest of the *Amicus*

This case presents a significant question regarding the administration by the State of New Jersey of its federal "categorical assistance" programs. These programs include Old Age Assistance (OAA), 42 U.S.C. 301, *et seq.*, Aid to Families with Dependent Children (AFDC), 42

U.S.C. 601, *et seq.*, Aid to the Blind (AB), 42 U.S.C. 1201, *et seq.*, and the immediate subject of this case, Aid for the Permanently and Totally Disabled (APTD), 42 U.S.C. 1351, *et seq.*

Unlike the Old Age, Survivors and Disability Insurance program (hereinafter social security) which is federally administered, the categorical assistance programs are administered at the state and local level. In fact, each individual state is free to determine whether it will participate at all in these programs and thus whether its citizens will be entitled to benefits thereunder. *King* v. *Smith*, 392 U.S. 309 (1968). Once a state elects to participate, however, it becomes subject to a detailed set of federal statutes and regulations governing the administration of the programs. *Townsend* v. *Swank*, 404 U.S. 282 (1971).

The State of New Jersey elected to participate in the program of Aid to the Permanently and Totally Disabled immediately after its enactment by Congress in 1950. Ch. 139, N.J. Laws of 1951. The salient portions of the New Jersey statutes relating to APTD closely tract the language of the governing federal statutes (compare N.J.S.A. 44:7-5, N.J.S.A. 44:7-39 to N.J.S.A. 44:7-42 with 42 U.S.C. 1351, *et seq.*), and since that time the New Jersey program has been approved by the Department of Health, Education and Welfare on a periodic basis. Pursuant to the New Jersey statute, a person is eligible for APTD who (1) is needy (N.J.S.A. 44:7-38) (2) is residing in New Jersey and is between 18 and 65 years old (N.J.S.A. 44:7-38), (3) is permanently and totally disabled by reason of any physical or mental defect, disease, or impairment other than blindness (N.J.S.A. 44:7-38), (4) is without adequate support (N.J.S.A. 44:7-5(b)), and (5) has not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance or of

evading responsibility to repay the welfare agency for assistance granted (N.J.S.A. 44:7-5(f)).

A state is allowed either to adminster the categorical assistance programs itself or to delegate that responsibility to local political subdivisions, but in either event it must designate a "single state agency" to coordinate and supervise the programs. 42 U.S.C. 1352(a)(3). The New Jersey Legislature has delegated primary responsibility for the administration of the categorical assistance programs to county welfare boards, such as the respondent, Essex County Welfare Board, and the Division of Public Welfare in the State Department of Institutions and Agencies has been designated the "single state agency" to coordinate and supervise administration by the county board. N.J.S.A. 30:4B-2. It is the view of the Division of Public Welfare, for which the Attorney General of New Jersey acts as sole legal advisor, that the discharge of its responsibility to coordinate and supervise the categorical assistance programs encompasses participation in major litigation, such as this case, which arises out of the administration of the programs.

The State of New Jersey also has a direct fiscal interest in this case. Whereas social security is funded solely by contributions of the federal government (added to employer and employee contributions), the categorical assistance programs are jointly funded by federal, state and local government. 42 U.S.C. 1353. The specific funding arrangement now in effect in New Jersey requires the State to pay three-eighths and the county where the welfare recipient resides one-eighth of the total cost, with the federal government providing the remaining one half. N.J.S.A. 44:7-40. The State of New Jersey's contribution to the categorical assistance programs for the fiscal year 1970-1971 was $135 million.

One method employed by the State of New Jersey to preserve the fiscal integrity of its welfare programs is to require recipients to execute agreements to reimburse the county welfare boards for any sums paid as assistance. N.J.S.A. 44:7-14.* Pursuant to such agreements, the state during fiscal year 1970-71 recovered $3.5 million previously paid under the categorical assistance programs. Included in this sum was $279,868 recovered from social security benefits comparable to those involved in this case. While this sum represents only a small percentage of the total appropriations by the State of New Jersey for the categorical assistance programs, it is a significant amount of money. Thus the State of New Jersey has a substantial fiscal interest in the outcome of this case.

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* Petitioners in this case are in no way attacking the state requirements relating to such "Agreements to Reimburse" or the specific Reimbursement Agreement executed by Mr. Wilkes prior to receiving disability assistance in this case.

When the original categorical assistance programs in the 1935 Social Security Act were enacted by Congress, most states already had enacted legislation providing some manner in which they could obtain reimbursement from a recipient for the amount of assistance extended. For a summary of the provisions of state acts as of June 1, 1934, see Report to the President of the Committee on Economic Security, p. 68 (1935). When the categorical assistance programs were enacted, such reimbursement provisions were made applicable to the states' administration of these programs.

ARGUMENT

The Supreme Court of New Jersey correctly held that an individual may not receive overlapping benefits for the same period of time under the Federal Old Age, Survivors and Disability Insurance and Aid to the Permanently and Totally Disabled programs, even where the duplicate benefits under the Old Age, Survivors and Disability insurance program are paid in a lump sum.

This case concerns two federal financial assistance programs under the Social Security Act designed to help persons who are disabled—the disability benefit provisions of the Old Age, Survivors and Disability program (social security) and the federal categorical assistance program of Aid to the Permanently and Totally Disabled (APTD). Social security provides benefits, regardless of need, out of a fund comprised of contributions by employers, employees and the federal government, and APTD provides assistance payments to needy disabled persons out of monies appropriated by the federal government and the states which participate. Basically then, the programs are complementary means through which disabled persons may receive financial assistance from the federal government.

The original social security program enacted in 1935, which had most of the attributes of a publicly-run private insurance program, provided only old age benefits. The persons it was intended to serve were the thousands of people who had worked all their lives but had seen their savings disappear during the depression in the collapse of the stock market and bank failures. See generally Presidential Message to Congress, June 8, 1934 (73rd

Cong., 2nd Sess.); Report to the President by Comm. on Economic Security (1935), pp. 38-39. However, there were millions of needy aged persons who could not qualify for social security, because they had not been employed for the required period. Moreover, the states which had enacted legislation to provide benefits for the needy aged found themselves unable to discharge this responsibility due to the fiscal pressures generated by the depression. Report to the President by Comm. on Economic Security (1935); Hearings on H.R. 7260 Before Sen. Comm. on Finance, 74th Cong., 1st Sess. 1935; Hearings on H.R. 7260 Before House Comm. on Ways and Means 74th Cong., 1st Sess., 1935. Therefore, at the same time it enacted social security, Congress enacted a complementary program of Grants to States for Old Age Assistance to provide benefits to the needy aged who could not qualify for social security. The evident intention of Congress in enacting the two measures was to unify the resources available from states, private enterprise and the federal government in order that the hardships of old age, which had been seriously aggravated by the depression, would be lessened. See Hearings on S. 1130 Before State Finance Committee, 74th Cong., 1st Sess., pp. 87, 241; Hearings on H.R. 4120 Before House Committee on Ways and Means, 74th Cong. 1st Sess. (1935) p. 55. Congress intended at the same time to ease the economic burden on states which were attempting to provide for their aged poor citizens and to assure that the program which was adopted would not expand in cost beyond the fiscal capacity of the states or the federal government. See Hearings on S. 1130 Before Senate Finance Committee, 74th Cong., 1st Sess. (1935) pp. 85-86; Hearings on H.R. 4120 Before Comm. on Ways and Means, 74th Cong., 1st Sess. (1935) pp. 87, 227-228, 241, 897.

It was made clear shortly after the enactment of the original Social Security Act that the categorical assistance programs are intended to provide benefits only as a last resort for needy persons who have neither earnings, savings or any other source of income, including social security, to meet the necessities of life. The first critical amendment of the Act provided that a State plan for old age assistance must:

> . . . provide that the State Agency shall, in determining need, take into consideration any other income and resources of an individual claiming old-age assistance . . ." Amendment of Aug. 10, 1939, Ch. 666, Title I, § 2, 53 Stat. 1360 (42 U.S.C. 302(a)(10(A)). See remarks in debate on amendment in House of Representatives at 84 Cong. Rec. 6704-6705, 6850, 6922 (1939).

Similar provisions were included in the enabling legislation for every other categorical assistance program (42 U.S.C. 302(a)(10)(A); 42 U.S.C. 602(a)(8); 42 U.S.C. 1202(a)(8)) including Aid to the Permanently and Totally Disabled. 42 U.S.C. 1352(a)(8). The same policy is reflected in the provisions which preclude any recipient from receiving benefits under more than one categorical assistance program at the same time. 42 U.S.C. 602(a)(12); 42 U.S.C. 1202(a)(7); 42 U.S.C. 1352(a)(7).

The basic congressional intent to prevent the payment of excessive benefits under the categorical assistance programs also has been noted by this court. See *e.g. Jefferson* v. *Hackney*, —— U.S. ——, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972).

The original complementary social security and categorical assistance programs for the aged were later expanded to provide benefits for the disabled. In 1950 Con-

gress enacted a categorical assistance program of Grants to the States for the Permanently and Totally Disabled. Act of Aug. 28, 1950, Ch. 809, Title III, § 351, 64 Stat. 555. Six years later, the social security program was amended to provide benefits for the disabled. Act of Aug. 1, 1956, Ch. 836, Title I, §10, 70 Stat. 815 (1956). In supporting the enactment of this amendment, Senator George again noted that categorical assistance is solely a program of last resort for persons whose needs cannot be met by other means including social security:

> ". . . As a progressive and enlightened Nation we have adopted the policy that assistance is a second line of defense, and that we want to rely on the tried and tested method of contributory social insurance to meet the major economic hazards of our industrial society . . ." 104 Cong. Rec. 13038 (1956).

There is no question that under 42 U.S.C. 1352(a)(8) the disability assistance benefits payable to Wilkes would have been reduced on a dollar-for-dollar basis, if his application for social security had been approved in a timely fashion and this had been brought to the attention of the county welfare board. In fact, the governing federal regulations specifically recognize that social security benefits represent income which must be taken into account in calculating the amount of an assistance grant. 45 C.F.R. § 233.20(a)(4)(i).

However, for reasons that are unclear on the record, there was a substantial delay by the Social Security Administration in approving Wilkes' application for a renewal of disability benefits. During this period, the county welfare board continued to pay him full welfare benefits without regard to his pending claim for social security. When the Social Security Administration finally approved the application for disability benefits, it made a lump sum

award to Wilkes for the period during which he should have been receiving monthly benefits. The county welfare board then brought this proceeding to recover the amount by which Wilkes' welfare benefits would have been reduced if the Social Security Administration had approved his application in a timely fashion, so that the total benefits would not turn on the fortuitous circumstance of when the federal agency acted.

While apparently conceding that the amount of welfare benefits could have been reduced by the amount of social security benefits if payment had been made monthly, the welfare board's claim for reimbursement was resisted on the grounds that it was barred by 42 U.S.C. 407, which provides:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

However, it is clear, as pointed out on pp. 7-10 of the Brief for the United States as *amicus curiae*, that this section was not intended to be an absolute bar to any recovery out of social security benefits. See *Beers* v. *Federal Security Administrator*, 172 F. 2d 34, 36 (2nd Cir. 1949); *Celebrezze* v. *Sparks*, 342 F. 2d 286 (5th Cir. 1965).* In fact, a companion section specifically provides

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* Needless to say, the recollections nearly forty years later of an individual responsible for securing enactment of the Act, as set forth in Appendix A to the petitioners' brief, should not be considered by this court as proper legislative history indicating a more far-reaching intent. *U. S.* v. *United Mine Workers of America*, 330 U. S. 258, 281-282 (1947).

that the Social Security Administrator may recover overpayments of social security benefits. 42 U.S.C. 404. Other sections of the Social Security Act clearly indicate that the overpayments which Congress authorized the government to recover under 42 U.S.C. 404 include duplicate social security benefits. 42 U.S.C. 402(g) contains extensive provisions to the effect that an individual who is eligible for dual benefit payments under two programs or two portions of a specific program may have his benefit payments reduced to avoid an overlap in benefit payments. 42 U.S.C. 402(k) provides that generally a person who may be entitled to more than one social security benefit at the same time—for example, a woman who is entitled to parent's benefits on her deceased child's social security account and also wife's benefits on her husband's social security account—may receive only the highest of the two benefit payments. Moreover, if a person is entitled for any month to both an old-age and a disability insurance benefit, he is entitled only to the larger of such benefits. 20 C.F.R. 404.353(c). Obviously, if a mistake is made and the government erroneously pays dual benefits contrary to any of the above provisions, the overpayment may be recovered pursuant to 42 U.S.C. 404. Hence the prohibition of 42 U.S.C. 407 against the enforcement of traditional creditor remedies out of social security benefits is qualified by the recognition in 42 U.S.C. 404 that a claim for the recovery of overpayment of government benefits should not be treated the same way as an action by a private creditor.

The recovery by the State of New Jersey of overlapping welfare benefits which never would have been paid if Wilkes' application for disability benefits had been approved in a timely fashion clearly falls within the congressional intention manifested by 42 U.S.C. 404, rather

than the restrictions upon ordinary private creditors' remedies established by 42 U.S.C. 407. A welfare agency which extends assistance to a needy person pursuant to one of the categorical assistance programs assumes a relationship with the recipient which is different from an ordinary creditor-debtor relationship. *Cf. Savoid* v. *Dist. of Columbia*, 288 F. 2d 851 (D. C. Cir. 1961); *In re Bemowski's Guardianship*, 3 Wisc. 2d 133, 88 N. W. 2d 22 (Sup. Ct. 1958). A welfare agency is legally required to pay assistance to needy persons who meet the eligibility criteria set forth within each categorical assistance program without regard to whether the person is a good or a poor "credit risk" or will ever be in a financial position to reimburse the agency for the assistance he receives. 42 U.S.C. 1352(a)(10). The recipient also enjoys certain rights, such as the right to social services, the right to have his income and resources computed in a specified manner, the right to a fair hearing upon agency action or inaction which aggrieves him, and in some circumstances the right to a continuation of assistance pending the determination of his grievances by the State welfare agency which prevent a welfare agency from resorting to the same remedies available to a private creditor. 42 U.S.C. 1352; 45 C.F.R. 205.10. There are also legal limitations not placed upon the ordinary creditor which may preclude a welfare agency from recouping funds expended by it or demanding reimbursement. 45 C.F.R. 233.20(a)(3)(ii)(d) provides that

> ". . . Current payments of assistance will not be reduced because of prior overpayments unless the recipient has income or resources currently available in the amount by which the agency proposes to reduce payment; except that where there is evidence which clearly establishes that a recipient wil-

> fully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the assistance payment in current or future periods . . ."*

Therefore, the danger that persons will be reduced to destitution by welfare agencies' claims for reimbursement or recovery of wrongfully received payments does not exist as it would in the situation where ordinary creditors proceed against a recipient to recover debts owed to them.

Finally, it must be emphasized again that the duplicate benefits for which reimbursement is sought in this case were paid under a section of the Social Security Act relating to categorical assistance which was intended by Congress to complement social security benefits. It is one of the most basic principles of statutory interpretation that where there are two acts upon the same subject the court should strive to give effect to both. *Menomenie Tribe* v. *U. S.*, 391 U. S. 404 (1968); *U. S.* v. *Zacks*, 375 U. S. 59 (1963). Here the appellants' contention that 42 U.S.C. 407 acts as a bar to the recovery of an overpayment of welfare benefits from a lump sum social security award fails to give full effect to the provisions of 42 U.S.C. 1352(a)(8) which requires all income and resources of a welfare recipient to be taken into account in calculating benefits. This contention is also irreconcilable with

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* As was noted by the New Jersey Supreme Court in its opinion, Petitioner Wilkes, was also the recipient of $92 per month from the Veterans' Administration in 1970. Pursuant to 42 U.S.C. 1352 this amount should have been considered by the Welfare Board in determining his eligibility for Disability Assistance, however this receipt of Veteran's benefits was not made known to the Board by Wilkes.

the principle that statutes are to be construed in a reasonable fashion (*U. S.* v. *American Trucking Association*, 310 U. S. 534, 543-544 (1939)), because it makes the availability of duplicate benefits turn on whether the social security administration approves an application for social security benefits promptly as well as encouraging applicants to seek delay in the processing of their claims. The court should, therefore, reject the premise that Congress was working at cross purposes when it enacted 42 U.S.C. 407 and 42 U.S.C. 1352(a)(8), and instead interpret the governing statutory provisions as establishing a *unified* program which does not authorize the payment of duplicate benefits.

CONCLUSION

It is respectfully submitted that for the foregoing reasons that the judgment of the Supreme Court of New Jersey should be affirmed.

Respectfully submitted,

GEORGE F. KUGLER, JR.,
Attorney General of New Jersey

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel and on the Brief.

JOAN W. MURPHY,
Deputy Attorney General,
On the Brief.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PHILPOTT ET AL. *v.* ESSEX COUNTY WELFARE BOARD

CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

No. 71-5656. Argued December 4, 1972—Decided January 10, 1973

The Social Security Act, 42 U. S. C. § 407, which prohibits subjecting federal disability insurance benefits and other benefits to any legal process, bars a State from recovering such benefits retroactively paid to a beneficiary, and in this case no exception can be implied on the ground that if the federal payments had been made monthly there would have been a corresponding reduction in the state payments. Pp. 3-4.

59 N. J. 75, 279 A. 2d 806, reversed.

DOUGLAS, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

v.

Welfare

ESSEX COUNTY
WELFARE BOARD

ON APPEAL TO THE SUPREME COURT OF NEW JERSEY

SUPREME COURT OF THE UNITED STATES

No. 71–5656

Doris Philpott and William Wilkes, Petitioners, *v.* Essex County Welfare Board. } On Writ of Certiorari to the Supreme Court of New Jersey.

[January 10, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Wilkes,[1] one of the petitioners, applied to respondent, one of New Jersey's welfare agencies, for financial assistance based upon need by reason of permanent and total disability. As a condition of receiving assistance, a recipient is required by New Jersey law to execute an agreement to reimburse the county welfare board for all payments received thereunder.[2] The purpose apparently is to enable the Board to obtain reimbursement out of subsequently discovered or acquired real and personal property of the recipient.

[1] The payment in controversy is in a bank account under the name of petitioner Philpott in trust for Wilkes.

[2] N. J. S. A. 44: 7–14 (a) provides:

"Every county welfare board shall require, as a condition to granting assistance in any case, that all or any part of the property, either real or personal, of a person applying for old age assistance, be pledged to said county welfare board as a guaranty for the reimbursement of the funds so granted as old age assistance pursuant to the provisions of this chapter. The county welfare board shall take from each applicant a properly acknowledged agreement to reimburse for all advances granted, and pursuant to such agreement, said applicant shall assign to the welfare board, as collateral security for such advances, all or part of his personal property as the board shall specify."

Wilkes applied to respondent for such assistance in 1966 and he executed the required agreement. Respondent determined Wilkes' monthly maintenance needs to be $108; and finding that he had no other income, respondent fixed the monthly benefits at that amount and began making assistance payments, no later than January 1, 1967. The payments would have been less, if Wilkes were receiving federal disability insurance benefits under the Social Security Act and respondent advised him to apply for those federal benefits.

In 1968 Wilkes was awarded retroactive disability insurance benefits under the Social Security Act, 42 U. S. 423, covering the period from May 1966 into the summer of 1968. Those benefits, calculated on the basis of $69.60 per month, for 20 months and $78.20 per month for six months, amounted to $1,864.20. A check in that amount was deposited in the account which Philpott holds as trustee for Wilkes. Under New Jersey law, we are told, the filing of a notice of such a reimbursement agreement has the same force and effect as a judgment. 59 N. J. 75, 80, 279 A. 2d 806, ——.

Respondent sued to reach the bank account under the agreement to reimburse. The trial court held that respondent was barred by the Social Security Act, 42 U. S. C. § 407, from recovering any amount from the account.[3] 104 N. J. Super. 280, 249 A. 2d 639. The Appellate Division affirmed. 109 N. J. Super. 48, 262 A. 2d 227. The Supreme Court reversed.[4] 59 N. J.

[3] 42 U. S. C. § 407 provides:

"The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

[4] Since respondent did not claim a right to the entire federal payment but only to the amount by which its own payments would

75, 279 A. 2d 806. The case is here on a petition for a writ of certiorari which we granted. 407 U. S. —.

On its face the Social Security Act in § 407 bars the State of New Jersey from reaching the federal disability payments paid to Wilkes.[2] The language is all inclusive[3]—"none of the moneys paid or payable under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process." The moneys paid as retroactive benefits were "moneys paid . . . under this subchapter"; and the suit brought was an attempt to subject the money to "levy, attachment . . . or other legal process."

New Jersey argues that if the amount of social security benefits received from the Federal Government had been made monthly, the amount of state welfare benefits could have been reduced by the amount of the federal grant. We see no reason to base an implied exemption from § 407 on that ground. We see no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor. Indeed, since the Federal Government provides one-half of the funds for assistance under the New Jersey program of disability relief, the State concededly, on recovery of any sums by way of reimbursement, would have to account to the Federal Government for the latter's share.

The protection afforded by § 407 is to "moneys paid" and we think the analogy to veterans' benefits exemptions which we reviewed in *Porter* v. *Aetna Casualty Co.*, 370 U. S. 159 is relevant here. We held in that case that

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have been reduced had the federal benefits been received currently rather than retroactively and because the stipulated facts were ambiguous as to when respondent actually began making assistance payments, the court remanded for a determination of the precise amount of respondent's claim.

[3] *Supra*, n. 3.

veterans' benefits deposited in a savings and loan association on behalf of a veteran retained the "quality of moneys" and had not become a permanent investment. *Id.*, at 161.

In the present case, as in *Porter*, the funds on deposit were readily withdrawable and retained the quality of "moneys" within the purview of § 407. The Supreme Court of New Jersey referred to cases[*] where a State which has provided care and maintenance to an incompetent veteran at times is a "creditor" for purposes of 38 U. S. C. § 3101 and at other times is not. But § 407 does not refer to any "claim of creditors" but imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a State.

The New Jersey court also relied on 42 U. S. C. § 404, a provision of the Social Security Act which permits the Secretary to recover overpayments of old age, survivors, or disability insurance benefits. But there has been no overpayment of federal disability benefits here and the Secretary is not seeking any recovery here. And the Solicitor General, speaking for the Secretary, concedes that the pecuniary interest of the United States in the outcome of this case, which would be its aliquot share of any recovery, is not within the ambit of § 404.

By reason of the Supremacy Clause the judgment below is

Reversed.

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[*] See *Savoid* v. *District of Columbia*, 288 F. 2d 851; *District of Columbia* v. *Reilly*, 249 F. 2d 524. See decision, at 59 N. J. 75, 85.